

The University of Chicago

INTERVENTION SHORT OF ARMED
FORCE IN LATIN AMERICA

A PART OF A DISSERTATION SUBMITTED TO
THE FACULTY OF THE DIVISION OF THE
SOCIAL SCIENCES IN CANDIDACY FOR THE
DEGREE OF DOCTOR OF PHILOSOPHY

INTERNATIONAL RELATIONS
AUGUST, 1941

By
CHARLES GRAY BREAM

CHICAGO, ILLINOIS

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CHAPTER I

THE LAW AND THE TREATIES

It was not an especially convivial gathering, that Sixth International Conference of American States, held at Havana in 1928. Not that any open rift remained to mar Pan-American relations; on the contrary, the Conference was able to reach a number of agreements on "nonpolitical" matters. It was simply that certain subjects which arose brought out the fundamental discord among the governments represented. On the surface, at least, it was not a case of the United States versus the rest of the hemisphere. The delegations of Nicaragua, Haiti, Chile, Peru, Cuba and Brazil, although they did not always wholeheartedly support the United States, stood aloof from the camp of the opposition. It was rumored, of course, that the attitudes expressed by delegates from Haiti and Nicaragua were merely the sentiments of governments under the control of United States marines, while Peru and Chile were more or less bound to follow the United States because of the incidents connected with the Tacna-Arica arbitration. And Cuba, it was pointed out, was not only the host of the conference, but more significantly, the Machado government was working for the reduction of the United States sugar tariff, and the repeal of the Platt Amendment. But whatever their cause, these undercurrents served to blur the line of cleavage. Fortunately for Pan-American friendship the lack of unanimity among the Latin American States preserved the United States from the invidious role of naked intransigence.

Perhaps the most explosive subject which intruded upon the calmness of the deliberations was that of "intervention." Latin Americans had come to show a strange lack of appreciation for their neighbor's benevolence. Their gratitude for the protection afforded by the big brother in earlier years had been weakened by the suspicion that the British power and policy had been at least equally responsible for their relative safety from European ambitions. And more recently whatever gratitude and

friendship they may have felt had been somewhat overlaid by animosity toward the actions of the United States. At worst those actions seemed to indicate a drive for outright possession; the expansion attendant upon the Mexican War created a lingering suspicion. At best they appeared to constitute a definite derogation of sovereignty; the landing of marines and the passing of judgment on the propriety of certain Latin American governments did not seem to the Latin Americans to permit a freedom of action in accord with the rights of independence. It had long been the fervent desire of Latin America to persuade the United States to desist from these practices. A possible approach to that goal appeared to lie through the adoption of a treaty or declaration to the effect that "intervention," in whatever circumstances, was illegal. If the United States could be brought to accept this, it would then stand clearly convicted in the eyes of the world should it thereafter pursue the course for which it had thus far claimed justification.

I

The proposal over which the argument raged in Havana had its origins in the attempt to codify international law for the American nations. In 1906, the Third Inter-American Conference approved a convention providing for the appointment of an International Commission of Jurists--one from each American government--to prepare draft codes of private and public international law.¹ When finally the Commission met in 1912, the Government of Brazil submitted a draft code prepared by Epitacio Pessoa, of which Article 19 stated:

No State shall intervene in the domestic affairs of another

Sole Paragraph. Neither a treaty authorizing intervention in case of civil war, nor the invitation or formal consent of the government against which a revolution is directed, will make intervention legitimate.²

The Commission found the total task before it so great, however,

¹ American Institute of International Law, Codification of American International Law (Washington: Government Printing Office, 1925), pp. 8, 19-21.

² Cited in Foreign Policy Association, Information Service, IV (April 27, 1928), p. 64.

that it delegated the work to six committees, whose action was disrupted by the World War. When the subject came up again at Santiago in 1923, it was decided to re-establish the Commission of Jurists, and each government was requested to appoint two delegates to the new organization.¹ Shortly thereafter, the Governing Board of the Pan American Union requested the American Institute of International Law² to prepare a draft code to be submitted to the Commission. A committee of the Institute drew up a declaration on the Fundamental Rights of American Republics which stated:

Article 1

The following principles are declared to constitute American Public Law and shall be applied and respected in America by all Nations:

1. The American Republics, equal before international law, have the rights inherent in complete independence, liberty, and sovereignty. Such rights can in no way be restricted to the profit of another Nation, even with the consent of the interested American Republics.

2. No American Republic can cede any part whatever of its territory to a non-American Nation, even if it consents to do so.

3. No Nation shall hereafter, for any reason whatsoever, directly or indirectly, occupy even temporarily any portion of the territory of an American Republic in order to exercise sovereignty therein, even with the consent of the said Republic.

4. No Nation has a right to interfere in the internal or foreign affairs of an American Republic against the will of that Republic. The sole lawful intervention is friendly and conciliatory action without any character of coercion.³

This project, together with twenty-nine others, was submitted to the International Commission of Jurists, which met at Rio de Janeiro in April, 1927.⁴ There it was caught up in a

¹Codification of American International Law, op. cit., pp. 9, 10, 17.

²This was an organization composed of national societies, in each country, containing not more than five members from each society. See its Constitution in American Institute of International Law, The Recommendations of Habana Concerning International Organization (New York: Oxford University Press, 1917), pp. 81-83.

³Codification of American International Law, op. cit., p. 37.

⁴International Commission of Jurists, Public International Law (Washington: Government Printing Office, 1927), p. 1.

tortuous debate on "intervention." Without tracing the course of the discussions, it may be observed that the Commission finally adopted a project including the phrase: "Ninguno Estado puede intervenir en los asuntos internos de otro." It has been suggested that the United States delegates accepted this proposal, in the belief that the Spanish term internos should be interpreted to mean "domestic." The United States could accept this interpretation and still interfere whenever foreign lives and property were involved, since in such a case the affair ceased to be "domestic" and became "external."¹ The Pan American Union, however, translated the word internos as "internal," which may have had a slightly broader meaning. The proposal before the Havana Conference was that "no State may interfere in the internal affairs of another."²

The project containing this provision, entitled "States: Existence--Equality--Recognition," at Havana was referred to the Committee on Public International Law. The Committee in turn referred it to Dr. Victor Maurtua of Peru, as the Reporter. His report, however, declared that before attempting to codify the law they should first define the fundamental principles upon which the law was based. Consequently he discarded the project of the Jurists, and recommended instead a Declaration of the American Institute of International Law of 1916, which reads as follows:

I. Every nation has the right to exist, and to protect and to conserve its existence; but this right neither implies the right nor justifies the act of the state to protect itself or to conserve its existence by the commission of unlawful acts against innocent and unoffending states.

II. Every nation has the right to independence in the sense that it has a right to the pursuit of happiness and is free to develop itself without interference or control from other states, provided that in so doing it does not interfere with or violate the rights of other states.

III. Every nation is in law and before law the equal of every other nation belonging to the society of nations, and all nations have the right to claim, and, according to the Declaration of Independence of the United States, "to assume, among the Powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them."

¹ Foreign Policy Association, op. cit., p. 66.

² International Commission of Jurists, op. cit., p. 8.

IV. Every nation has the right to territory within defined boundaries and to exercise exclusive jurisdiction over its territory, and all persons whether native or foreign found therein.

V. Every nation entitled to a right by the law of nations is entitled to have that right respected and protected by all other nations, for right and duty are correlative, and the right of one is the duty of all to observe.

VI. International law is at one and the same time both national and international; National in the sense that it is the law of the land and applicable as such to the decision of all questions involving its principles; international in the sense that it is the law of the society of nations and applicable as such to all questions between and among the members of the society of nations involving its principles.¹

In his remarks advocating the adoption of this declaration, Dr. Victor Maurtua implied a desire to authorize interference in those cases where a state had not fulfilled its duties, though at the same time he hinted that such action should take place under a collective responsibility, such as was envisaged in the League Covenant.²

This Declaration at a number of points reflected the attitude of the Latin-American states in regard to the annoyances and problems created by the policy of the United States. The weakness of it was, however--as pointed out by a number of the delegates--that its language was almost impossibly vague and obscure. In the discussion of the report thirteen states came out definitely in favor of the principle of nonintervention as accepted by the Rio jurists. Honorio Pueyrredón of Argentina, for example, stated:

Intervention--diplomatic or armed, permanent or temporary--is an attempt against the independence of nations, and cannot be justified on the plea or the duty of protecting the interests of citizens. For the weaker nations cannot exercise such a right when their citizens suffer damage during convulsions in the strong states.³

¹ Cited in Elihu Root, "The Declaration of the Rights and Duties of Nations Adopted by the American Institute of International Law," AJIL, X (April, 1916), 211-21.

² Foreign Policy Association, op. cit., p. 67.

³ Ibid., p. 68.

Inasmuch as several other countries, together with the United States, did not favor the Rio project, the matter was referred to a subcommittee, of which Charles E. Hughes of the United States was a member. It was found there that agreement was impossible, so it was decided that the consideration of the Fundamental Bases of International Law and States should be postponed until the Seventh Conference.

When the Committee made its report in plenary session, however, the round of declarations favoring nonintervention began again. The new delegate from Argentina started it off with a statement reaffirming the "irrevocable convictions" of the Argentine Government in regard to nonintervention. Seven other states followed with a statement of adherence to the sentiments. At this point Hughes, obviously misunderstanding just what had been said, arose and stated that he wished to make the foregoing expressions his "own." Other delegates then spoke, expressing regret that unanimity in the subcommittee had not been possible. Guerrero thereupon observed that it appeared that agreement now existed. Whereupon President Antonio Sánchez de Bustamante requested the delegate from Salvador to draw up a new formula of a general character. Following an adjournment, Dr. Gustavo Guerrero presented the following motion:

The Sixth Conference of the American Republics, taking into consideration that each one of the Delegations has expressed its firm decision that the principle of non-intervention and the absolute juridical equality of States should be roundly and categorically stated, Resolves:

No State has the right to intervene in the internal affairs of another.¹

The fat was once more in the fire. The Brazilian delegate, noting the previous impossibility of reaching unanimous agreement, and pointing to the danger of the disintegration of Pan-Americanism over such a fundamental question, asked that no vote be taken. Delegates of Colombia, Costa Rica, Ecuador and the Dominican Republic, adhered to the position of Brazil. But Aquiles Elorduy of Mexico demanded the extension of the resolution to include external affairs. And Dr. Eduardo Álvarez of El Salvador stated that:

The right of intervention is the right of might. It is the strong who intervene in the internal affairs of a small country. Legal means should first be established of

¹ Ibid., p. 70.

ascertaining the facts; a decision should then be given, after which the weak nation should be made to execute its duty. . . . But a country has no right to intervene . . . before such a juridical inquiry takes place . . . simply because it owns fleets, cannons and armies.¹

This was too much. Hughes, who "was obviously getting more angry every moment,"² arose and declared in part:

Now what is the situation when we come to the actual facts of the case? There is no one here who does not have enjoyment in the free air of independence. My country was nurtured in the desire for independence. One hundred years ago we declared the policy that all the American Republics should be recognized in their independence. We have given our arms and our blood for the independence of the American Republics and are always ready to do so. We yield to none in the establishment of the ideal of sovereignty and independence for every one of the American Republics from the greatest to the smallest. And I have the right, speaking here on behalf of the Delegation of the United States, to declare the policy of my country. I joined readily in the resolution of the Delegation of Mexico against aggression. We want no aggression. We want no aggression against ourselves. We cherish no thought of aggression against anybody else. We desire to respect the rights of every country and to have the rights of our country equally respected. We do not wish to govern any American Republic. We do not wish to intervene in the affairs of any American Republic. We simply wish peace and order and stability and recognition of honest rights properly acquired so that this hemisphere may not only be the hemisphere of peace but the hemisphere of international justice

Let us face the facts. The difficulty, if there is any, in any one of the American Republics, is not of any external aggression. It is an internal difficulty, if it exists at all. From time to time there arises a situation most deplorable and regrettable in which sovereignty is not at work, in which for a time in certain areas there is no government at all,--in which for a time and within a limited sphere there is no possibility of performing the functions of sovereignty and independence. Those are the conditions that create the difficulty with which at times we find ourselves confronted. What are we to do when government breaks down and American citizens are in danger of their lives? . .

Now it is the principle of international law that in such a case a government is fully justified in taking action--I would call it interposition of a temporary character--for the purpose of protecting the lives and property of its nationals. I could say that that is not intervention. One can read in textbooks that that is not intervention. . . . Of course the United States cannot

¹ Ibid.

² New York Times, February 19, 1928.

forego its right to protect its citizens. International Law cannot be changed by the resolutions of this Conference. . . . The rights of nations remain, but nations have duties as well as rights . . . we cannot codify international law and ignore the duties of States, by setting up the impossible reign of self-will without any recognition upon the part of a State of its obligations to its neighbors. . . . It is an easy task to indulge in the subtle simplicity of formulas that only express one-tenth of the truth.¹

This somewhat choleric outburst put an end to the matter. There was passed back and forth among the other delegates some language unusually strong for such a gathering, but the upshot of it was the adoption of the motion postponing the consideration of the Fundamental Bases of International Law and States until the next Conference.

Before the meeting in Montevideo, however, a group of the South American States under the leadership of Argentina held a special conference. It was felt that the existing treaties for the pacific settlement of disputes, particularly those negotiated in the Western Hemisphere, were not adequate. One of the principal difficulties in regard to the treaty situation lay in the fact that by no means all of the states had ratified them; but in addition there seemed to be gaps in the existing machinery for the settlement of disputes which warranted the formulation of another treaty. Consequently these states, considering a draft submitted by Saavedra Lamas of Argentina, adopted the (Argentine) Anti-War Treaty on Non-Aggression and Conciliation, which included:

Art. I. The High Contracting Parties solemnly declare that they condemn wars of aggression in their mutual relations or those with other states, and that the settlement of disputes or controversies of any kind that may arise among them shall be effected only by the pacific means which have the sanction of international law.

Art. II. They declare that as between the High Contracting Parties, territorial questions must not be settled by violence, and that they will not recognize any territorial arrangement which is not obtained by pacific means, nor the validity of the occupation or acquisition of territories that may be brought about by force of arms.

Art. III. In case of non-compliance by any state engaged in a dispute, with the obligations contained in the foregoing articles, the contracting states undertake to

¹ Foreign Policy Association, op. cit., p. 71.

make every effort for the maintenance of peace. To that end they will adopt in their character as neutrals a common and solidary attitude; they will exercise the political, juridical or economic means authorized by international law; they will bring the influence of public opinion to bear but will in no case resort to intervention either diplomatic or armed; subject to the attitude that may be incumbent upon them by virtue of other collective treaties to which such states are signatories.¹

The remaining articles bound the signatories to submit to the conciliation procedure which the treaty detailed. The system thus set up was clearly conciliatory, not arbitral, for Article X provided that: "The report of the Commission shall in no case have the character of a final decision or arbitral award either with respect to the exposition or the interpretation of the facts, or with regard to the considerations or conclusions of law." The emphasis of the convention was thus placed upon the machinery for conciliation, with only passing attention to the question of "intervention." Apparently the prohibition in Article III was aimed at "intervention" in international disputes by a third state, i.e., "external intervention." At the same time it should be noted that allowance was made--though the treaty names no names--for action under the League Covenant, which could partake of the nature of "intervention" as that term was conceived by some of the signatories of the Argentine treaty.

This Anti-War Treaty was signed by Argentina, Brazil, Chile (with reservations), Mexico, Paraguay, and Uruguay on October 10, 1933, at Rio de Janeiro. It was provided that other states might adhere to the compact, and in accordance with this the United States ratified its adherence on June 27, 1934, depositing the instrument of adherence on August 10, 1934.² In thus acting the United States was, at least in part, reversing its stand of 1928.

However, before the United States became a party to this treaty it had signed another which was only a modification of the

¹49 U.S. Statutes 3375 (1936).

²49 U.S. Statutes 3363 (1936). In a note of March 3, 1933, the United States refused to sign on the ground it did not go as far as the Treaty for the Renunciation of War (Pact of Paris, 1928) in renouncing war, and needlessly encumbered the peace structure of the world. See Raymond Leslie Buell, "The Montevideo Conference and the Latin American Policy of the United States," Foreign Policy Reports, IX, No. 19 (November 22, 1933), p. 212.

one rejected by Hughes. The Seventh International Conference of American States, meeting at Montevideo in December, 1933, was presented with a project on the Rights and Duties of States. The subcommittee which considered it had taken as its basis principally the projects worked out by the International Commission of Jurists at Rio de Janeiro in 1927 (which in turn had considered other proposals as outlined above). Two of these--the first referring to the establishing of the constitutive bases of international law, and the second to the rights and duties of states--which had been presented at Havana and rejected, were subsequently recast as one, and in that form there was drawn up shortly before the Montevideo Conference, by some of the members of the Institute of International Law, the project which the Second Sub-Committee presented to the Second Committee for its action.¹

The discussion which ensued in the Committee consisted of a series of flowery speeches conveying a unanimous condemnation of "intervention." Unlike his predecessor, however, Secretary of State Cordell Hull made a speech which was greeted as conciliatory, and indicated his willingness to sign the project. As finally approved, the Convention provided:

Art. 1. The state as a person of international law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other States.

Art. 2. The federal state shall constitute a sole person in the eyes of international law.

Art. 3. The political existence of the state is independent of recognition by the other states. Even before recognition the state has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently to organize itself as it sees fit, to legislate upon its interests, administer its services, and to define the jurisdiction and competence of its courts.

The exercise of these rights has no other limitation than the exercise of the rights of other states according to international law.

Art. 4. States are juridically equal, enjoy the same rights, and have equal capacity in their exercise. The rights of each one do not depend upon the power which it possesses to assure its exercise, but upon the simple fact of its existence as a person under international law.

¹See the speech of Mr. Raimundo Rivas of Colombia, in Seventh International Conference of American States, First, Second and Eighth Committees, Minutes and Antecedents (Montevideo, 1933), p. 103.

Art. 5. The fundamental rights of states are not susceptible of being affected in any manner whatsoever.

Art. 6. The recognition of a state merely signifies that the state which recognizes it accepts the personality of the other with all the rights and duties determined by international law. Recognition is unconditional and irrevocable.

Art. 7. The recognition of a state may be express or tacit. The latter results from any act which implies the intention of recognizing the new state.

Art. 8. No state has the right to intervene in the internal or external affairs of another.

Art. 9. The jurisdiction of states within the limits of national territory applies to all the inhabitants.

Nationals and foreigners are under the same protection of the law and the national authorities, and the foreigners may not claim rights other or more extensive than those of the nationals.

Art. 10. The primary interest of states is the conservation of peace. Differences of any nature which arise between them should be settled by recognized pacific methods.

Art. 11. The contracting states definitely establish as the rule of their conduct the precise obligation not to recognize territorial acquisitions or special advantages which have been obtained by force whether this consists in the employment of arms, in threatening diplomatic representations, or in any other effective coercive measure. The territory of a state is inviolable and may not be the object of military occupation nor of other measures of force imposed by another state directly or indirectly or for any motive whatever even temporarily.

Art. 12. The present Convention shall not affect obligations previously entered into by the High Contracting Parties by virtue of international agreements.

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Art. 15. The present Convention shall remain in force indefinitely but may be denounced by means of one year's notice given to the Pan American Union, which shall transmit it to the other signatory governments. After the expiration of this period the Convention shall cease in its effects as regards the party which denounces but shall remain in effect for the remaining High Contracting Parties.¹

Further excerpts from the speeches of the delegates made when this project was under consideration will be included below. At this point, however, it is well to take note of the reservation with which the United States appended its signature and ratification. In the course of the revival meeting in which the Convention came up for a vote of the Second Committee, Secretary Hull made an ex-

¹
49 U.S. Statutes 3097-3102 (1935).

temporaneous speech concerning the attitude of the United States which was incorporated verbatim as a reservation to the adherence of the United States. Said he:

The policy and attitude of the United States Government toward every important phase of international relationships in this hemisphere could scarcely be made more clear and definite than they have been made by both word and action especially since March 4. I have no disposition therefore to indulge in any repetition or rehearsal of these acts and utterances and shall not do so. Every observing person must by this time thoroughly understand that under the Roosevelt Administration the United States Government is as much opposed as any other government to interference with the freedom, the sovereignty, or other internal affairs or processes of the governments of other nations.

In addition to the numerous acts and utterances in connection with the carrying out of these doctrines and policies, President Roosevelt, during recent weeks, gave out a public statement expressing his disposition to open negotiations with the Cuban Government for the purpose of dealing with the treaty which has existed since 1903. I feel safe in undertaking to say that under our support of the general principle of non-intervention as has been suggested, no government need fear any intervention on the part of the United States under the Roosevelt Administration. I think it unfortunate that during the brief period of this Conference there is apparently not time within which to prepare interpretations and definitions of these fundamental terms that are embraced in the report. Such definitions and interpretations would enable every government to proceed in a uniform way without any difference of opinion or of interpretations. I hope that at the earliest possible date such very important work will be done. In the meantime in case of differences of interpretations and also until they (the proposed doctrines and principles) can be worked out and codified for the common use of every government, I desire to say that the United States Government in all of its international associations and relationships and conduct will follow scrupulously the doctrines and policies which it has pursued since March 4 which are embodied in the different addresses of President Roosevelt since that time and in the recent peace address of myself on the 15th day of December before this Conference and in the law of nations as generally recognized and accepted.¹

At the time of its delivery Secretary Hull's speech was a further contribution to the spirit of amity and good-will which prevailed at Montevideo--in marked contrast with that at Havana--largely as a result of the mollifying policy of the United States and the extraordinarily effective diplomacy of Secretary Hull. But as a reservation to a treaty it leaves some doubt as to the precise

¹
Ibid.

status of the United States. The "Convention on Rights and Duties of States" is an amazing document in itself. It was conceived as a mere declaration of existing law, though the previous policy of the United States, at least in regard to Article 8, would seem to indicate some dispute as to the established existence of such law. Unfortunately, just what some of the articles mean is by no means clear from the wording of the text. Article 5, "The fundamental rights of states are not susceptible of being affected in any manner whatsoever," conveys practically no concrete signification at all. Secretary Hull indicated this deplorable vagueness in his comments; that they were incorporated as a reservation, however, only contributed to the confusion.

This treaty, with reservation, was ratified by the United States on June 29, 1934.¹ Thus the long effort to persuade the Colossus to a policy of self-denial appeared to be crowned with legal obligations. However, it was felt in some quarters that this was not enough. Nothing had occurred recently to arouse the Latin American suspicions, but a latent fear had become ingrained over a period of years. Consequently, when in 1936 President Roosevelt issued a call for a special Conference, and the several governments began to draw up projects for consideration, Mexico concocted an "Additional Protocol Relative to Non-Intervention." When this was introduced at the Inter-American Conference for the Maintenance of Peace at Buenos Aires, it apparently met with little opposition (though it was suggested that the United States accepted it "to gain Mexican support on other measures"),² and it was circulated and unanimously signed before it ever reached the formal consideration of the First Committee.³ In the form of its final adoption the Protocol stated:

The Governments represented at the Inter-American Conference for the Maintenance of Peace,

Desiring to assure the benefits of peace in their mutual relations and in their relations with all the nations of the

¹49 U.S. Statutes 3097 (1934). The Senate on June 15 advised the ratification, the President signed it on June 29, and on July 13, 1934, ratification was deposited with the Pan American Union.

²New York Times, December 13, 1933, p. 41.

³Inter-American Conference for the Maintenance of Peace, Proceedings (Stenographic Reports) (Buenos Aires: Imprenta Del Congreso Nacional, 1937), p. 82.

earth, and to abolish the practice of intervention; and

Taking into account that the Convention on Rights and Duties of States, signed at the Seventh International Conference of American States, December 26, 1933, solemnly affirmed the fundamental principle that "no State has the right to intervene in the internal or external affairs of another,"

Have resolved to reaffirm this principle through the negotiation of the following Additional Protocol, and to that end have agreed as follows:

Article I.-- The High Contracting Parties declare inadmissible the intervention of any one of them, directly or indirectly, and for whatever reason, in the internal or external affairs of any other of the Parties.

The violation of the provisions of this Article shall give rise to mutual consultation, with the object of exchanging views and seeking methods of peaceful adjustment.

Article II.-- It is agreed that every question concerning the interpretation of the present Additional Protocol, which it has not been possible to settle through diplomatic channels, shall be submitted to the procedure of conciliation provided for in the agreements in force, or to arbitration, or to judicial settlement.¹

The treaty obligations thus assumed by the United States are clear enough in one sense; "intervention" is illegal and the United States has promised to desist from all practice thereof. But there is still a very open question as to just what the United States (and the other signatories, of course) is bound not to do. Unfortunately, there has been no unanimity in regard to the precise nature of "intervention." The difficulty lies in the fact that in its relations with another State, a given State may indulge in a wide range of practices whose purposes and effects are difficult to classify. For example, the military occupation of another State's territory may be undertaken for one or several of a variety of reasons and with greatly differing effects depending upon the intention and circumstances. Similarly, the adoption of a measure usually classified as strictly domestic, such as the laws for the control of immigration and trade, will almost certainly have some effects in other countries, and such domestic measure may be adopted primarily because of the external results anticipated.

In view of this confusion, and particularly because of

¹51 U.S. Statutes 41-42 (1937). Remaining articles provided for ratification, and for termination as in Article 15 of the Convention on Rights and Duties of States.

the uncertainty as to the treaty obligations of the United States, it is instructive to review the opinions of the publicists. The major preoccupation of the writers has been with the question of the legality or justifiability of intervention. While there has not always been agreement as to what incidents should be classified as "intervention," the principle debate has raged around the general tendency to urge the obligation of nonintervention, but with certain exceptions about which the text-writers differ greatly. It has been recognized that there is a conflict between the theories of the independence of States and the practice of intervention. As a result the writers have excused this limitation upon independence on various grounds--self-defense, redress, protection of nationals, the preservation of the balance of power, humanitarian interests, etc.¹ While this approach to the question in terms of the grounds upon which intervention is undertaken has been frequently used, there has been little agreement as to which grounds really constitute justification.²

For present purposes, however, we may ignore this debate, since it no longer directly pertains.³ According to the treaties,

¹See, e.g., Sir Robert Phillimore, Commentaries upon International Law (2d ed., 4 vols.; London: Butterworths, 1871-1889), I, 465-70; P. Pradier-Fodéré, Traité de droit international public (8 vols.; Paris: G. Pedone-Lauriel, 1885-1906), I, 559.

²But see Quincy Wright, "The Outlawry of War," AJIL, XIX, (January, 1925), 76-103. Discussing the use of armed force (which has been taken by many writers as one of the criteria of intervention) this authority observed:

"It is believed that the circumstances cited, (1) instant and overwhelming necessity for defense of territory or citizens, (2) redress for properly validated legal claims, (3) prevention of flagrant violations of international law, (4) fulfillment of privileges expressly given by treaty, and (5) enforcement of law within the State's own jurisdiction are the only circumstances in which modern international law recognizes the use of force as a legitimate procedure" (*ibid.*, p. 94).

Subsequent international legislation has invalidated most of these grounds as bases for the use of force.

³While it must be emphasized that the general question of justification for "intervention" is not here under consideration, it may be noted that interventions have been justified on the broad grounds that the invaded State was not fulfilling its duties to other States. This has in general been the chief legal basis for the complaints and interferences by the United States in Latin America. The Latin American States have not denied that such duties exist (though they have insisted that their fulfillment should not be enforced by "intervention"); the disagreement

"intervention" is now illegal in the Western Hemisphere. Presumably it could not be justified in any circumstances, with the possible exception of a "collective intervention" under certain of the treaties for the settlement of disputes. The disagreement which is relevant here is that concerning the definition of "intervention."¹

has arisen over the questions of what those duties are and whether or not they were being performed in specific cases.

At Montevideo, the Second Committee debated the problem and adopted a Resolution on International Responsibility of the States. After a reference to the tremendous difficulty encountered in previous attempts to codify these duties, and a recommendation that the entire problem be handed over for further study to the agencies of codification previously set up, the Resolution stated that the Conference:

"Reaffirms once more, as a principle of international law, the civil equality of the foreigner with the national as the maximum limit of protection to which he may aspire in the positive legislation of the States.

"Reaffirming equally that diplomatic protection cannot be initiated in favor of foreigners unless they exhaust all legal measures established by the laws of the country before which the action is begun. There are excepted those cases of manifest denial or unreasonable delay of justice which shall always be interpreted restrictively, that is, in favor of the sovereignty of the State in which the difference may have arisen. Should no agreement on said difference be reached through diplomatic channels, within a reasonable period of time, the matter shall then be referred to arbitration" (Seventh International Conference of American States, *op. cit.*, p. 159).

Of course this touched upon only a segment of the general problem, and it was primarily restrictive upon the action of a complaining State--a natural result of the previous relations of Latin America with the United States.

For an earlier formulation and objections of the United States thereto, see International American Conference, Reports and Recommendations Concerning a Uniform Code of International Law, Sen. Ex. Doc. 183, 51st Cong., 1st Sess., Serial No. 2688 (Washington: Government Printing Office, 1890), pp. 24, 26-30.

See also the Draft Convention on Responsibility of States, and comment in Research on International Law, Harvard Law School, Draft Conventions on Nationality, Responsibility of States, Territorial Waters (Cambridge: Harvard Law School, 1929), pp. 133-245.

¹While most publicists have concerned themselves to a greater or lesser degree with the question of justification of "intervention," at least two American authors have begged the question with definitions that make all intervention legally correct. Taylor asserts that, when viewed in the light of practice, intervention "may be defined to be the right . . . forcibly to interfere . . . whenever the intervening power or powers determine that such action is necessary under the principle of self-preservation" (Hannis Taylor, A Treatise on International Public

II

Intervention is a "term difficult to confine within the limits of a precise and exhaustive definition."¹ Hall has offered the following:

Intervention takes place when a state interferes in the relations of two other states without the consent of both or either of them, or when it interferes in the domestic affairs of another state irrespectively of the will of the latter for the purpose of either maintaining or altering the actual condition of things within it. Prima facie, intervention is a hostile act, because it constitutes an attack upon the independence of the state subjected to it. Nevertheless its position in law is somewhat equivocal. Regarded from the point of view of the state intruded upon it must always remain an act which, if not consented to, is an act of war. But from the point of view of the intervening power it is not a means of obtaining redress from a wrong done,

Law [Chicago: Callaghan and Co., 1901], pp. 424-25).

A more recent writer, Stowell, gives the term a similar meaning. Pointing out that there is a lack of any "superior enforcing agency," he observes that:

"The state or sovereign injured by an abusive failure on the part of a sister state to fulfill an obligation of cooperation recognized by international law may, after due notice and in conformity with the recognized procedure, intervene against the delinquent sovereign, and by the use of appropriate measures of force constrain it to reform its abusive conduct and to conform to international law. . . ."

"Intervention as thus employed in the relations between states may be broadly defined as the rightful use of force or the reliance thereon to constrain obedience to international law" (Ellery C. Stowell, International Law [New York: Henry Holt and Co., 1931], pp. 71-72).

Under such definitions as these, the United States could not possibly now commit an "intervention," for by treaty the United States has denied or surrendered the "right" to "intervene" and thus it is impossible to perform the sort of rightful act of interference or use of force--i.e., "intervention"--which these writers envisage. Their position is of interest, however, for it suggests that "intervention" is or may be a form of "sanction." This view is shared by a number of other publicists. Fauchille, for example, observes that "intervention is thus not so much a right, as the sanction of the rights of states" (Paul Fauchille, Traite de droit international public, Vol. I, Part I [8th ed.; Paris: Rousseau et Cie., 1922], p. 562). And certain of the actions allowed by the Covenant of the League of Nations, conceived as a form of sanction, might also be classified as "interventions." (See Ellin D. Ellis, "Intervention as a Sanction of International Law," American Society of International Law, Proceedings, XXVII [1933], pp. 78-86.)

¹ Taylor, op. cit., p. 412.

but a measure of prevention or of police, undertaken sometimes for the express purpose of avoiding war. In the case moreover of intervention in the internal affairs of a state, or against a particular form of state life, and it is frequently carried out in the interest of the government or of persons belonging to the invaded state. It is therefore compatible with friendship towards the state as such, and it may be a pacific measure, which becomes war in the intention of its authors only when resistance is offered, not merely by persons within the state and professing to represent it, but by the state through the persons whom the invading power chooses to look upon as its authorized agents. Hence although intervention often ends in war, and is sometimes really war from the commencement it may be conveniently considered abstractedly from the pacific or belligerent character which it assumes in different cases.¹

Oppenheim offers a very definite qualification concerning those acts which may be classified as "intervention":

Intervention is dictatorial interference by a State in the affairs of another State for the purpose of maintaining or altering the actual condition of things. . . . It always concerns the external independence or the territorial or personal supremacy of the State concerned, Intervention proper is always dictatorial interference, not interference pure and simple.²

Other writers imply or state that this "dictatorial interference" must involve the use or threat of armed force. Such a view may be deduced from the remarks of Hall cited above. Lawrence observes that "the essence of intervention is force, or the threat of force in case the dictates of the intervening power are disregarded."³ Von Liszt points out that intervention "requires a demand for doing or not doing a certain thing with support of the

¹ William Edward Hall, A Treatise on International Law (4th ed.; Oxford: Clarendon Press, 1895), pp. 297-98. A number of authors discuss "intervention" without ever venturing a definition of the term, although from some of these a definition of a sort might be derived by implication.

² L. Oppenheim, International Law, A Treatise, edited by H. Lauterpacht (2 vols., 5th ed.; London: Longmans, Green and Co., Ltd., 1937), I, 248.

³ T. J. Lawrence, Principles of International Law, revised by Percy H. Winfield (7th ed.; Boston: D. C. Heath and Co., 1923), p. 120. Also see Edwin Maxey, International Law (St. Louis: F. H. Thomas Law Book Co., 1906), p. 348; Augustus Granville Stapleton, Intervention and Non-Intervention (London: John Murray, 1866), pp. 8-11.

threat of the application of armed force."¹ However, this has not been unanimously accepted as an exclusive criterion of intervention. Not all uses of armed interference have been generally accepted as "intervention." And some writers have recognized the variety of forms of suasion and have given definitions which might be stretched to include incidents in which there was no use or threat to use armed force.² Evidence of the disagreement on these points will appear below.

It might be supposed that a fairly representative and inclusive definition of intervention readily could be derived from a consideration of the specific historical instances which publicists have labelled "intervention." Such is not the case. While there are many episodes which are classed as intervention by a number of writers, there are so many border-line cases which are either ignored or disputed that an approach of this sort would be extremely difficult if not entirely unsatisfactory. Nevertheless, some light is cast on the problem by the statements of various writers concerning the sorts of behavior which are not "intervention." Here again there is a great deal of difference of opinion, arising from both the theoretical and practical difficulties of classification. Neither the true motive nor the real effect of a given act can be ascertained with any certainty in all instances, and the writers have not agreed upon the manner in which these characteristics of a state's action should be used in classifying its behavior.³ However, at least four types of action,

¹ Franz von Liszt, Das Völkerrecht (11th ed.; Berlin: Julius Springer, 1918), p. 62.

² For example, Hyde: "The term intervention is here used to describe simply the interference by a State in the domestic or foreign affairs of another in opposition to its will and serving by design or implication to impair its political independence" (Charles Cheyney Hyde, International Law 12 vols.; Boston: Little Brown and Co., 1921, I, 117).

³ Most authors have made distinctions concerning intervention only in regard to kinds of intervention, in terms of methods, purposes, or locale. Thus, there have been distinguished diplomatic and armed intervention; interventions for self-defense, to correct an international delinquency, to protect citizens, etc. (and these in turn have been distinguished as justifiable or unjustifiable interventions); and internal and external interventions, i.e., interference in the domestic or the external affairs of a state.

though closely related to "intervention," have been distinguished from it by various writers; that is, mediation, reprisals, interposition, and aggression.¹

Mediation, which "consists in direct conduct of negotiations between the parties at issue on the basis of proposals made by the mediator,"² is distinguished from "intervention" because it has exclusively the character of advice, and never has binding

¹The most extensive listing of such distinctions is that given by Hershey:

"Armed or forcible intervention should be distinguished from mere diplomatic intervention which is unaccompanied by a threat or the use of force. Such interposition usually takes the form of notes addressed to a foreign government in which grievances are stated, claims urged for injuries or non-payment of obligations, or protests made against alleged wrongs, bad treatment or unjustifiable conduct.

"Intervention should also be carefully distinguished from the following acts:

- (1) Mediation or the use of good offices between States on the verge of or during hostilities.
- (2) Purely defensive measures by way of preparation for war.
- (3) Measures of retorsion and reprisal which are essentially retaliatory in their nature.
- (4) Mere intercession or friendly advice.
- (5) Aid or assistance rendered to another State upon request.
- (6) Diplomatic protests against the conduct of other governments.
- (7) Diplomatic interposition to collect claims or otherwise protect the rights of a State or its nationals.
- (8) Alliances showing an intention to assist or cooperate in case of war.
- (9) War itself--a status to which intervention often leads, but which it may be intended to avoid.

"The intervening State may, however, use the various coercive means which are applicable in war, such as the occupation of a port, or the seizure of a strategic position, etc. Or it may prefer measures of self-help which fall short of war, as an embargo, pacific blockade, etc. Often a mere veiled threat has the desired effect.

"Recognition of the independence of a revolted community, if premature, may be a disguised intervention. Recognition of belligerency, even if premature, does not amount to an intervention" (Amos S. Hershey, The Essentials of International Public Law and Organization [rev. ed.; New York: Macmillan Co., 1927], p. 236).

²Oppenheim, *op. cit.*, II, 10. There is a theoretical distinction between mediation and good offices, but diplomatic practice and treaties do not always make the distinction. See also John Bassett Moore, A Digest of International Law (8 vol.; Washington: Government Printing Office, 1906), VI, 239, 242.

force.¹ Theoretically the distinction is a valid one, inasmuch as intervention possesses minatory or coercive character not present in true mediation, and many writers have observed that the mere tender of friendly advice cannot be construed as intervention.² A practical difficulty arises, however, from the fact that a presumably mediating state may, because of its inherently preponderant position or because of its real intent, in actual fact be intervening; that is, suggesting a solution which the disputants--whether they be two or more states or factions within State--are afraid to refuse. This has been pointed out by a number of publicists. Foulke observes:

The interference may range from the gentlest diplomatic suggestion to the exertion of overpowering force, and the desired object may be obtained at any stage of the proceedings. Some writers have distinguished diplomatic from forcible interference, which distinction seems to be only one of a degree of effort.³

And Calvo, including as "intervention" diplomatic representations, official notes delivered publicly, arbitral intervention, and armed intervention, says that:

Certain publicists give the name of intervention only to the last case, objecting that if the interposition on the part of one state in the affairs of another is not violent but peaceful, limited purely to advice, it resolves itself into an amicable interposition, or good offices, or even in mediation, which is not intervention. According to my view, this is taking the result for the act itself. The form in which intervention takes place does not alter its character. Intervention which is produced by the employment of diplomatic process is no less intervention; it is intervention more or less direct, more or less dissimulated,⁴ which is very often merely the prelude of armed intervention.

¹ Cf. Hague Convention for the Pacific Settlement of International Disputes (1907), Art. 6, 36 U.S. Statutes 2213 (1910).

² Oppenheim, op. cit., I, 250; Von Liszt, op. cit., p. 62; Henry Wager Halleck, International Law (4th ed., 2 vol., rev. by Sir G. Sherston Baker; London: Regan Paul, Trench, Trubner and Co., Ltd., 1908), I, 564-66; Henry Wheaton, Elements of International Law (3d English ed., edited by A. C. Boyd; London: Stevens and Sons, Ltd., 1889), p. 115; John Westlake, International Law (2d ed., 2 parts; Cambridge: University Press, 1910), Part I, p. 320; J. L. Brierly, The Law of Nations (2d ed.; Oxford: The Clarendon Press, 1936), p. 247.

³ Roland R. Foulke, A Treatise on International Law (2 vol.; Philadelphia: John C. Winston Co., 1920), II, 63.

⁴ Carlos Calvo, Le droit international (6 vols., 5th ed. rev.; Paris: Arthur Rousseau, 1896), I, 266.

These observations would not apply to genuine mediation; but it cannot be denied that in actual fact many negotiations proclaimed as mediation have been undertaken with the intent and/or effect of intervention, even though there was an absence of any appearance of armed force.

A second action closely related to, but often distinguished from, intervention is the use of reprisals, which "are such injurious and otherwise internationally illegal acts of one state against another as are exceptionally permitted for the purpose of compelling the latter to consent to the settlement of a difference created by its own international delinquency."¹ There is here no question as to the use of force; reprisals generally involve the direct manipulation of armed force against the alleged delinquent. The distinction is made on the basis of the absence from true reprisals of an intent to interfere in the affairs of the State against whom the action is taken. Bluntschli has said:

Intervention in the proper sense of the word is the interference of a foreign state in the affairs of another independent state. If one accepts this definition, the constraint employed against a state to oblige it to fulfill its international duty is not an intervention.²

And Bonfils similarly observes:

There is no intervention either in the act of constraining by reprisals or force of arms a state to fulfill its international engagements or to repair an injustice or an insult. There is pressure, violence, but not intervention.³

¹Oppenheim, *op. cit.*, II, 114-15. See also Ellery C. Stowell, Intervention in International Law (Washington: John Byrne and Co., 1921), p. 2. The terms "retorsion" and "retaliation" are sometimes used more or less interchangeably in this connection, although there is an important distinction. "The characteristic of retorsion is that it consists of legal but deliberately unfriendly acts with a retaliatory or coercive purpose" (Herbert W. Briggs, The Law of Nations [New York: F. S. Crofts and Co., 1928], p. 682). George Grafton Wilson and George Fox Tucker, International Law (9th ed.; New York: Silver, Burdett and Co., 1935), p. 737. For a discussion of the historical and etymological differences in these terms, see Hyde, *op. cit.*, II, 169-74.

²Jean-Gaspard Bluntschli, Le droit international codifié (5th ed.; Paris: Gullaurien et Cie., 1895), p. 273.

³Henry Bonfils, Manuel de droit international, revised by Paul Fauchille (4th ed.; Paris: A. Rousseau, 1905), p. 160. See also Lawrence, *op. cit.*, pp. 119-120. Distinguishing internal, external and punitive intervention (which are "not merely . . . three kinds of the same thing" but "three quite different things"), he observes that "punitive intervention should be relegated to methods of redress falling short of war." Pradier-Fodéré asserts

Again it may be noted that the theoretical validity of this distinction is likely to suffer in practice. In addition to the disagreement which may arise in regard to the pretext for the making of reprisals, there is an added difficulty in detecting the real intent of the state taking such action. And even though its purpose be strictly limited to the making of reprisals, the method used may in fact have repercussions affecting the independence of the state subjected to them.

A third form of behavior which has been distinguished from "intervention" is interposition in behalf of nationals. Says Pradier-Fodéré:

The right or duty of protection of nationals in a foreign country being laid down, the exercise of that right, the accomplishment of that duty, does not necessarily constitute an intervention in the internal affairs of another country. Intervention, properly speaking, is the interference of a foreign state acting with authority in the internal affairs of another independent state and contrary to the will of the last. Where the act is not with authority in the internal affairs of a country, without the consent freely given of that country, there is no intervention.¹

A good deal of support for this viewpoint may be found in the writings of American authors. Moore points out that interposition consists of various forms of intercession²--one of which is the use of armed force such as the landing of the marines--and may be and often is preventive; for example, the establishment of a Legation Guard in a country torn by civil strife. Accordingly, there is drawn a distinction between "political" and "nonpolitical" intervention.³ Hyde in defining "intervention" excludes from that heading cases in which territory is temporarily invaded on grounds of self-defense, "or for the protection of nationals resident therein, and with no further object or result. There are also eliminated the numerous instances of essentially nonpolitical interference in which a State interposes in behalf of nationals deemed to have been denied justice at the hands of another, and

that "there is in fact a difference between armed intervention and . . . the recourse to force to make good one's rights" (op. cit., I, 624).

¹Pradier-Fodéré, op. cit., I, 623-24.

²"Good offices are also frequently used by diplomatic agents in giving unofficial aid to their fellow citizens in matters that lie outside the scope of formal intervention" (Moore, op. cit., VI, 239).

³Ibid., VI, 239-367, par. 911-26.

merely seeks to obtain compensatory damages in their behalf."¹
And Borchard says:

The landing of armed forces for the protection of citizens has practically always been free from any attempt to interfere in the internal political affairs or administration of the country entered, and when confined to the purpose of assuring the safety of citizens abroad, or exacting redress for a delinquent failure to afford local protection, the action must be considered not as a case of intervention, but as non-belligerent interposition.²

Most writers, however, discuss this as a type of intervention, making a distinction among the objectives of interference.³ Here again the theoretical distinction can be applied to actual practice only with extreme difficulty. Diplomatic intercession may be devoid of the characteristics of intervention, but, as in the case of mediation, the latent power or actual intent of the intervening state may give its protestations a threatening tone, especially in view of the fact that such intercession is usually made by a major power in a backward state. And whether the interposition be carried out by diplomatic representations or by the application of armed force, it is very likely to have political repercussions within the country where the intercession takes place, whatever the intent of the power extending protection to its nationals therein.

A fourth type of state action to be distinguished from "intervention" is aggression. As Hall pointed out in the passage cited above, intervention is often undertaken for the express

¹Hyde, *op. cit.*, I, 117. Hyde also notes that "the preferring of a claim by interposition may, however, lead to intervention if the demands of the aggrieved state are ignored or treated with contempt" (*ibid.*, p. 475).

It should also be noted that, as frequently used, the term "interposition" may include "reprisals," in so far as reprisals or the threat thereof are employed to obtain redress for a failure to provide protection. Generally, however, interposition which involves the use of armed force is designed to be preventive. Where it is diplomatic in form, it may include demands for redress.

²Edwin Montefiore Borchard, *The Diplomatic Protection of Citizens Abroad* (New York: The Banks Law Publishing Co., 1915), p. 449. The author goes on to admit that armed interposition is, nevertheless, an impeachment of the effective sovereignty of the country occupied.³

³Oppenheim refers in this connection to the right to protect citizens abroad which may cause "intervention by right" (*op. cit.*, I. 253).

purpose of avoiding war. A difference frequently may be marked in the scope and magnitude of the operations undertaken. More significant, however, is the difference in purpose.¹ If no aggressive intention is involved, the action may be classified as mere intervention, though aggression may develop from it. At the same time, the waging of outright war, declared or undeclared, whether for purposes of aggression or defense, is clearly different from "intervention."²

¹ The problem of defining "aggression" or an "aggressor state" is one which cannot be dealt with here, but the inherent difficulty of the question may be detected in the Convention for the Definition of Aggression of July 3, 1933, between Russia and Afghanistan, Esthonia, Latvia, Persia, Poland, Roumania, and Turkey. According to Article II, the aggressor in an international conflict "will be considered the State which will be the first to commit any of the following acts:--

1. Declaration of war against another State;
2. Invasion by armed forces, even without a declaration of war, of the territory of another state;
3. An attack by armed land, naval, or air forces, even without a declaration of war, upon the territory, naval vessels, or aircraft of another state;
4. Naval blockade of the coasts or ports of another State;
5. Aid to armed bands formed on the territory of a State and invading the territory of another State, or refusal, despite demands on the part of the State subjected to attack, to take all possible measures on its own territory to deprive said bands of any aid and protection" (cited in Oppenheim, *op. cit.*, II, 159-60).

In thus defining "aggression" simply in terms of overt behavior, the signatories unavoidably included certain acts which have in many instances passed as "intervention," thereby underscoring the fact that "intervention" often consists in warlike acts which do not eventuate in aggression or war only because of the self-restraint of the intervening state and the impotence of the state whose independence is violated.

² It is submitted that the use of the term "intervention" in the case of armed participation in a going war has been productive of much confusion. While it has frequently been said that a state "intervened" in a war, or a conflict has been termed a "war of intervention," such usage is unfortunate, for it blurs a distinction which should be preserved. "War" and "intervention" are two different things; if a State mixes in a war, whatever its motives, it is engaging in war, not in "intervention" (cf. Lawrence, *op. cit.*, p. 120).

The whole question is somewhat confused by the fact that recent international law has outlawed war, so that in one sense it no longer exists; there is only aggression and resistance thereto, either in self-defense or as a sanction to enforce treaties. Nevertheless, whether participation in international hostilities be considered according to the traditional view of "war" or in terms of aggression and resistance thereto, such action is beyond the scope of true "intervention."

Difficulty once more arises when the theoretical distinction is applied to the actual behavior of States. A disclaimer of hostile intent may accompany maneuvers which result in the acquisition of the fruits of aggression. In its initial stages an attack may appear to be interventionary--that is, in support of a demand for change of policy or government--its aggressive purpose becoming apparent only in the sequel; such has been the method of certain German aggressions in the past three years. On the other hand, threats of force on a warlike scale may be designed for purely interventionary ends, and may accomplish their purpose without being implemented. Even in retrospect the true intention of a threat or hostile act cannot always be determined, for it may have been abandoned or frustrated short of consummation. And the results of "intervention" are in some instances difficult to separate from those of aggression.

It should be repeated that the consideration of mediation, reprisals, interposition and aggression as different from intervention has not been agreed to by the general body of publicists. And although these are the most valid distinctions which might be set up, others have been introduced by one or more writers.¹

Having failed to agree as to what intervention is not, it has likewise been impossible to reach agreement as to what it is. Intervention is interference, dictatorial in nature, most publicists say. But what form it may take, what its objectives may be or what results it should have--such criteria cannot be derived from common consent.

¹For example, some authors assert that assistance to a government faced with rebellion is not intervention. See Theodore Dwight Woolsey, Introduction to the Study of International Law, revised and enlarged by Theodore Salisbury Woolsey (6th ed.; New York: Charles Scribner's Sons, 1901), p. 43. Oppenheim, making a similar distinction, speaks of this as "co-operation" (op. cit., I, 250). Pradier-Fodéré, on the other hand, observes that when both parties to a civil conflict request "a foreign power to intervene, there is less an intervention than friendly assistance" (op. cit., p. 561). While some writers have alleged the correctness of armed intervention in behalf of the government (Bluntschli, op. cit., p. 275; Von Liszt, op. cit., p. 63), others have denounced it (Hall, op. cit., p. 286; Bonfils, op. cit., p. 165; Maxey, op. cit., p. 341).

Bonfils takes the position that action for the maintenance of a "balance of power" is not intervention (op. cit., p. 160). Other writers, though not making this distinction, propose that such action is justifiable (Oppenheim, op. cit., I, 253). Hyde excludes action within a protectorate (op. cit., I, 117).

III

It is clear from this consideration of the discussions by publicists that anyone attempting to formulate any comprehensive definition must fall afoul of one or more writers at all points, while he might find support in some quarters for any conceivable position which he might take. The factitious distinctions which have been set up present irreconcilable divergences riding off furiously in all directions at once. It might be well, therefore, to wipe clean the slate and begin with a definition based on the prerogative of a writer to define his own terms so long as he uses them consistently. However, there is in this matter a treaty situation, and such arbitrary definitions cannot properly be applied without taking account of what the treaty was intended to mean. Since the bare term "intervention" as used in the treaties is not self-explanatory, and since the text-writers do not agree as to the precise signification of the term, it is necessary to turn to the question of what the negotiators of the treaties had in mind.

From the Minutes of the Second Committee at Montevideo one thing at least is clear. The Latin American delegates were in the grip of a common and solidary attitude toward "intervention"--they were against it. Furthermore, unlike the publicists, they could see no grounds on which it might be justified. Even those whose governments had refused to support openly the Havana treaty came forth with renunciations of their predecessors' position. Cuadre Pasos of Nicaragua exhorted:

Nicaragua was a shadow in the deliberations of the Havana Conference. . . .

Nicaragua asks the weaker nations who are its fellows to unite in order definitely to support in the Conference the holy principle of non-intervention, to the end of averting the compromises of the Havana Conference included in the minutes of that Conference.¹

Hermínio Portell Vilá of Cuba renounced the former Machado government:

My country, today under the rule of a most liberal government, must make a definite declaration that Cuba is positively against intervention, and that the men who made the declaration in Havana did not represent the spirit of

¹Seventh International Conference of American States, op. cit., p. 107.

the Cuban people who are against intervention. Intervention is not only the "curse of America" but, as a Cuban internationalist has said, it is the "curse of curses" of my country, the cause of all the evils of the Cuban Republic.¹

As more or less representative of the sentiment of all the Latin Americans, may be taken one further dramatic statement of Angel Alberto Giraudy, another delegate from Cuba:

We have displayed before you our sore bodies, our broken hearts, and we have proclaimed that the only remedy for stopping our torture is to eliminate the nefarious principle of intervention which afflicts us all.²

This condemnation of "intervention" was based in part, of course, upon the natural resentment of outside interference. That such action has been a source of irritation to Latin American pride and a cause of animosity toward the United States is axiomatic. Puig Casauranc of Mexico elaborated this a bit when he observed:

There exists a serious inter-American problem derived from the sensation of disgust, from the impression of almost constant anxiety, from the definite hindrance to progress which in our countries means intervention, which is the moral disaster at home or the insult in another's house.³

The Latin Americans did not object to "intervention" merely on the grounds of dislike for its effects; they also insisted that a state had no right to take such action and in so doing it was violating the sovereign rights of other states. Dardo Regules of Uruguay asserted that "in no American Assembly has the right of intervention been sustained."⁴ Benjamin Cohen of Chile viewed the proposed treaty as a proper "declaration that full sovereignty is contrary to and does not tolerate foreign domination."⁵ From Mr. Saavedra Lamas of Argentina came the plea to "continue this great juridical systematization" by voting "for non-intervention." For, said he: "non-intervention is an elemental principle in juridical matters. There exist no rights against rights. Sovereignty is a right. How then can there be rights or

¹Ibid., p. 105.

²Ibid., p. 117.

³Ibid., p. 110.

⁴Ibid., p. 122.

⁵Ibid., p. 117.

laws, against sovereignty?"¹

Having thus decided that a state had no right of "intervention" there still remained the question of just what specific actions were without right. Antoine Pierre-Paul of Haiti, after referring to the manner in which the United States had "impoverished and enslaved" the small nations of the Caribbean "at the selfsame moment" that it had proclaimed before the civilized world the right of the smaller countries to govern themselves," insisted upon the necessity for the framers of the project to define in clear and concise terms what they mean by intervention."² Actually the subcommittee dealing with this project included in its report a sort of definition (which is discussed below); but there did not seem to be any complete agreement that the term needed any explanation. Francisco Luis da Silva Campos of Brazil, a member of the subcommittee, reported that his opinion "was that the Sub-Committee, not only in the project, nor in the report, nor in the explanation of motives, should enter into details concerning the determination of what intervention might be." Apparently this judgment sprang partly from a realization of the difficulty of setting up any definition upon which agreement could be reached. But it probably was also a reflection of a "you know what I mean" attitude. As Héctor David Castro of El Salvador remarked, "I consider it to be needless to make precise definitions of each of the concepts we incorporate in the articles of our convention; America knows perfectly well what intervention is, because it has lived it."³

A number of additional comments of the delegates are il-

¹ Ibid., pp. 114-15. The Argentine delegate continued at this point with a condemnation of "treaties authorizing intervention, which would be proscribed by the "legal rules . . . of non-intervention." This issue is not here under discussion, but it may be noted that the writers on international law have not agreed. Some treat of intervention in accordance with a treaty as perfectly proper (Oppenheim, op. cit., I, 249; Von Liszt, op. cit., p. 62; Brierly, op. cit., p. 249; Taylor, op. cit., p. 420; Maxey, op. cit., p. 340). But others suggest that such treaties, at least where they bind a state to uphold a particular regime, are illegal (Edward S. Creasy, First Platform of International Law [London: John Van Voorst, 1876], p. 285).

² Seventh International Conference of American States, op. cit., p. 119.

³ Ibid., p. 126.

luminating in this connection, for they indicate that the Latin Americans wished to have the term given as extensive a meaning as possible. Tulio M. Cestero of the Dominican Republic mentioned in connection with intervention "any international action which suppresses, reduces, suspends, enslaves or humbles the sovereignty of the State in the community of American Nations."¹ David Castro of El Salvador equated "the principle of non-intervention" with "the mutual respect of the States."² José D. Arosemena of Panama, mentioning the Havana disagreement on "intervention," announced his adherence "to all those ideas which insure in the greatest scope imaginable the complete independence and sovereignty of all the States of America."³ A slightly more specific equivalent for "intervention" was suggested by Antonio Parra of Ecuador when he asked: "What is intervention but a kind of war, disguised and wary?"⁴ And Saavedra Lamas similarly observed: "What is intervention, then, but violence? There is a penetrating, profound logic which touches the very spirit; intervention is violence."⁵ While these comments indicated the major preoccupation with the use of armed force as a method of "intervention," other means were also in mind; Portell Vilá asserted, in connection with current events in Cuba which will be discussed at length below, that, "there is intervention in Cuba today, another sort, but it is there."⁶ And Dr. Puig Casauranc, in a discussion of Mexico's policy of recognition, implied that the withholding of recognition could be and had been in the case of the United States a form of intervention.⁷ Clearly the Latin American delegates did not hold to any narrow interpretation of the term "intervention," and for some of them it appears that almost no limits were placed upon the types of action which might be included in the term.

The only authoritative formulation of a definition for "intervention" to come out of the Conference was that composed by the subcommittee which submitted the project for the Convention on the Rights and Duties of States. In its report to the Second

¹Ibid., p. 104.

²Ibid.

³Ibid., p. 116.

⁴Ibid., p. 113.

⁵Ibid.

⁶Ibid., p. 106.

⁷Ibid., p. 112.

Committee the Sub-Committee stated:

The topic relating to intervention having been fully debated, the Sub-Committee is unanimously agreed that it is indispensable and essential definitely to establish the principle that no State has the right to interfere in the domestic or foreign affairs of another State. The formula adopted in the project is the same as that proposed in the American Commission of Jurists by the Argentine Delegation.

The Sub-Committee considers it necessary, also, to affirm clearly in this treatise on objectives, proposed for the correct interpretation of the project, the juridical concept of intervention.

For this reason, the Sub-Committee has resolved, unanimously, to insert in the present treatise the following definition:

Any act of a State, through diplomatic representation, by armed force, or by any other means involving effective force, with a view to making the State's will dominate the will of another State, and, in general, any maneuver, interference or interposition of any sort, employing such means, either directly or indirectly in matter of the obligations of another State, whatever its motive, shall be considered as Intervention, and likewise a violation of International Law.

It would seem quite unnecessary to state that the Sub-Committee was, and is, in perfect accord that any friendly act to offer good offices and mediation in the foreign relations of States in order to maintain peace is, by its very nature, outside the definition of intervention. This applies also to the united action of the formation of the League of Nations, the universal peace agent, of which the majority of the American States are members.¹

It can hardly be said that this "definition" places any close restrictions as to the sort of behavior which might be considered "intervention." Through the use of the phrase "through diplomatic representation" the term "intervention" could be stretched to cover practically any effort of a state to assist its nationals or to object to the policy of another state. At the same time the "means involving effective force" could be a variety of methods including domestic legislation within the "intervening" state. In short, this definition could conceivably be stretched or twisted to cover almost any act of a government which has any repercussions beyond its own boundaries.

Of course it was recognized that in regard to both the general principle and the interpretation thereof the attitude of the United States was crucial. In their own eyes, whatever interventions the Latin Americans had committed could not hold a candle

¹ Ibid., p. 165.

to those of the United States. Dr. Puig Casauranc frankly stated the problem in a fervent speech:

We shall discuss wonderful treaties that talk of non-intervention; . . . but we believe that as long as political thinking does not at the same time change radically there will always be some way of saying, tomorrow or day after tomorrow, that such and such an act is not intervention,

Consequently, Fellow Delegates, extending the word "intervention" to its limit, giving it every possible magnitude, and all the connotation and grammatical or logical meaning possible, Mexico rejects it, no matter what the discussion or the approval of the project for treaty, if it is not signed by the United States. Of greater importance in this case for the health of America is a frank and open declaration--followed by deeds--that they will allow us a few years of confidence while final wording and acceptance is secured on the chapter dealing with "Rights and Duties of States."¹

The attitude of the United States presumable was stated by Secretary Hull in his speech quoted above.² It is submitted, however, that both the wording of these comments and their inclusion as a reservation served to leave some doubt in the minds of the Latin Americans. It was partly as a result of this that the Additional Protocol was presented at Buenos Aires.³ And Puig Casauranc's fear that certain acts might be excused by the assertion that they were not "intervention" was well-founded. The remarks of Secretary Hughes at Havana in regard to "interposition" offered a specific example. This rationalization was explicitly rejected by the delegates at Montevideo; Puig Casauranc stated that they "must reject as sophisticated and not convincing Hughes' intelligent manner of explaining and justifying intervention as 'temporary interposition.'" Saavedra Lamas likewise denounced such use of force, denying the thesis presented at Havana to the effect that interposition was necessary in some cases. Inasmuch as this form of intervention had been so common in Latin America, its elimination was one of their major objectives, particularly in view of their opinion that "intervention" had so frequently been used in

¹Ibid., p. 112.

²See page 12.

³There was also some uncertainty as to the binding nature of the Convention on Rights and Duties of States, apparently rising out of its simple declaratory form. The delegates at Montevideo made a number of references to the obligatory nature of the Convention, but some of the comments made at Buenos Aires suggest that those delegates, at least, were not certain of it.

conjunction with or preliminary to "interventions" with another purpose than that of immediate protection of nationals.

Whether or not the United States was determined at this juncture to forswear irrevocably its "right" of "interposition" and to reject the view that it was not "intervention" is difficult to say. It is of interest to note, however, that preparatory to the Montevideo Conference the Solicitor of the Department of State had prepared a revision of the memorandum on the right to protect citizens in foreign countries. This document drew a distinction between "intervention" and "interposition" similar to that made by Moore and Hughes, asserted that there had been a differentiation in the practice of the United States, and insisted that the right of such protection was established in international law. While it cannot be denied that this distinction has a certain validity--that nonpolitical interposition may in its motives and effects be different from interference designed to influence the course of internal politics or external policy¹--the important point here is that the Latin Americans have considered "interposition" a form of "intervention" and had in mind the forbidding of this practice by the treaties under consideration. And the subsequent abstinence by the United States might be taken as acquiescence in this position.

It may be concluded, therefore, that any use of armed force by one state within the jurisdiction of another--short of outright war or aggression--constitutes an "intervention" as that term is used in the treaties. This includes the practice of armed interposition for the protection of citizens in foreign countries and the employment of armed reprisals, even though there is no intended or actual interference with domestic politics. The same may be said for threatening to use armed force, whether by means of minatory protests or the concentration of troops or naval units in the vicinity of a state which is being "advised" as to its course of action. Such is the position not only of the Latin Americans but also of a majority of the publicists.²

¹The United States, Department of State, Solicitor for the Department of State, J. Reuben Clark, Right to Protect Citizens in Foreign Countries by Landing Forces (3d rev. ed.; Washington: Government Printing Office, 1933), pp. 24-25, 33.

²It should be noted that all hostile measures short of war--whether classified as reprisals, or interposition, or inter-

It is submitted, however, that a central feature of most "intervention" is the interference with the course of domestic politics or external policy. In so far as armed interposition is designed solely to protect the lives and property of citizens from the ravages of lawless elements or the violence of civil war it may not possess this particular characteristic, but in actual practice a proclamation of limited intent may mask ulterior motives, while the employment of armed force is very likely to affect the course of events within the invaded country, no matter how carefully it is used. This is true also of reprisals. At the same time, and even more important in the present study, there are other kinds of "force," other means of "dictatorial interference" with domestic politics or external policy.¹ The use of these other means may not be such an obvious derogation of sovereignty as is armed interference, but the fact remains that "intervention" properly defined includes the use of various means of "non-violent" pressure whose impact is designed to affect the self-determination of another government or people.

A distinction may here be drawn on the basis of intent, though its ascertainment is sometimes difficult. The adoption of a purely domestic measure may inadvertently effect within another state a serious dislocation having wide internal political repercussions, but it would be stretching the term to include as

vention--as well as war itself were made illegal before the adoption of the Convention on the Rights and Duties of States and the Additional Protocol. The Treaty for the Renunciation of War (Briand-Kellogg Pact, 1928) included:

"Art. 2. The high contracting parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means" (46 U. S. Statutes 2346 [1929]). Thus, any dispute as to whether "interposition" is a form of "intervention" or something entirely different is beside the point that the use of armed force is in either case illegal, and can properly be employed only in resistance to aggression. See the Budapest Articles of Interpretation, cited in Briggs, op. cit., p. 717.

¹Says Foulke: "It might be supposed from the remarks of the writers that intervention takes place by one state entirely within the jurisdiction of another. This is a mistake. States may exert upon each other pressure through various external factors, which may result in a changed state action against the will and consent of the state, which nevertheless is not accompanied by any act of the interfering state within the jurisdiction" (op. cit., p. 64).

"intervention" those actions whose effects within another state are unintended or clearly secondary or incidental to the major objective of the measure in question. At the same time, it cannot be denied that the intent to intervene is often manifested in similar measures; where that intent is present, whether the purpose in mind is accomplished or not, the action must be classed as "intervention."¹

IV

Examples of what is meant in this discussion might be supplied at great length from history or from current events throughout the world. The following pages, however, are limited to a consideration of four methods of non-violent interference: (1) arms embargoes, (2) nonrecognition, (3) diplomatic mediation, (4) economic pressures. It is recognized, of course, that methods (3) and (4) are but general headings for a wide variety of specific procedures, while only certain variations of these have been considered. The manner in which some of the possible variants have been used will appear in the chapters following. The use of armed interference has not been considered, partly because it is generally agreed to be "intervention," partly because this type of intervention has been frequently discussed.

An understanding of the use of these means of suasion may be best derived from a study of specific cases. In choosing the cases for consideration, no attempt has been made to be all-inclusive. There is, in the first place, a limitation in geographical terms; only instances in the relations of the United States with Latin America are considered. Not only are these the only countries toward whom the United States has the peculiar treaty obligations already discussed; relations with those countries are generally accepted as presenting certain distinct features which are not present in relations with other parts of the world. It goes without saying that the problems involved are at this moment in particular need of solution, though this present study is not an attempt to provide the answers sought.

¹There is an analogy in domestic law, in which action resulting in death is judged according to intent (i.e., murder, manslaughter, accident) and action intended to produce death is a crime even though the effort be unsuccessful.

In the second place, there has been made a distinction between "internal" and "external" intervention.¹ The line of demarcation is sometimes blurred; interference in Latin American boundary disputes has frequently had its effects on the domestic politics of the parties involved, while pressure applied internally has been in other instances reflected in the foreign policy of the country squeezed. Nevertheless, there has usually been an appreciable difference between cases, and concentration may logically be centered upon one or the other type. A study of equal length, it should be noted, could very well be made of participation on the part of the United States by non-violent means in the international disputes of Latin America, though whether such participation was "intervention" would depend upon the particular circumstances in each case (and the definition used). However, many of these cases have been extensively and ably discussed; reconsideration in a single volume would have value chiefly as a collection. Furthermore, it now appears that the source of most of these difficulties, that is, boundary disputes, has been pretty well settled at least for the present, while considerable machinery has been set up to handle any which may arise in the future. Whether or not the machinery will work depends upon a number of unpredictable factors; but at least there does not at the present seem to be much likelihood of serious difficulties or disputes.

On the other hand, the practice of internal intervention by the United States, while definitely abated in the past few years, may well arise again in the near future. It is sheer prognostication--on which more will be said later--but it seems quite possible that events in the other parts of the world may force the United States to choose between strict observance of its treaty obligations in the Western Hemisphere and measures deemed necessary for national defense. At any rate, so far as the author is aware, there has been no systematic study made of a number of the cases in which the United States has used, singly or in conjunction, the various means of non-violent pressure or intervention, with an eye to seeing just what was the intention--

¹As noted above (page 19, n. 4) this distinction is made by a number of publicists. See Lawrence, op. cit., pp. 119-20; Westlake, op. cit., p. 317; Halleck, op. cit., pp. 558-59.

and effect--as regards the internal policies of the countries involved.

Certain of the scenes of intervention in Latin America which are generally listed are not herein discussed for two reasons. In the first place, attention has usually centered upon those cases in which armed force was brought into play, and a relatively great deal has been written upon those episodes. In the second place, there can be little doubt that the instances most frequently discussed were cases of intervention. The United States Government has entered a reservation, as noted above, in regard to cases where there was no intent to interfere with domestic politics; but in the better known cases (such as Panama in 1903, Cuba in 1906-9, Nicaragua in 1911 and 1926 and after, and Haiti and Santo Domingo over a period of years) there has been general agreement in labelling the behavior of the United States as "intervention," whereas in the cases under discussion in this study, where the weapons of the United States have not included the use of armed force (except sporadically, and usually without the intention to interfere), there has not been such agreement.

In this connection we are concerned primarily with what is past: What has the United States done, in the nature of interfering by non-violent means in the domestic politics of its southern neighbors? Such a study might go back to the very beginnings of inter-American relations. But in the belief that the more significant methods are best observed in comparatively recent episodes--and in the interests of a reasonable brevity--concentration has been centered upon the events of the past thirty years. In consequence of this and other exclusions mentioned above, the following pages treat with events in the relations of the United States with Mexico from 1912 to 1928, with Costa Rica from 1917 to 1919, with Honduras from 1919 to 1925, with Guatemala from 1920 to 1924 and again in 1930, with El Salvador from 1930 to 1933, with Cuba from 1933 to 1934, with Brazil in 1930, and with Bolivia and Peru in 1920 and Ecuador from 1925 to 1928. In addition there is a brief review of those relations with Nicaragua, the Dominican Republic and Haiti in which non-violent means of direction gave way to the use of military force. As observed, it has not been possible within the limits of this study to consider all the instances in which non-violent pressure has been brought to bear. But it is believed that the cases listed

are the most important ones, and from them may be derived an adequate understanding of the purposes and operation of the various methods used.

Whether or not it is agreed that these cases constitute intervention, a consideration of them is important from the standpoint of Hemisphere politics. Whether or not their repetition would be a violation of the treaties may seem to be an academic question. But the point of crucial significance is that--however the United States may view these actions, either as past events or future policies--the Latin Americans affected may well deem them a violation of the treaties. In that case, whether they be right or wrong from a legal standpoint, there is raised a serious political problem. The violation, or imagined violation, of a treaty can be a serious threat to the progress of amity and good-neighborliness.¹

The United States is thus faced with a two-fold problem. It may be accepted that this and succeeding administrations will desire to maintain a position of strict legality. In pursuance of this desire the United States Government itself must give consideration to the extent of the obligations imposed by the treaties. At the same time, allowance must be made for the opinions of the other states party to the treaties. Either the possible action, or the alleged treaty violation in itself, or both, may be the cause of seriously strained relations. Of course world developments may not only force the United States to drastic action, but they may also produce Latin American acquiescence in behavior which obviously violates the treaties. Clearly, however, wisdom would suggest that a careful balance must be struck. If a proposed act of intervention is agreed to by Latin America, no political problem presents itself even though the action be illegal; but if the intervention is to cause alienation either in itself or because of its illegality, then the gain to be had by

¹Presumably this contingency, together with the provision of ad hoc definitions of intervention, is provided for in Art. II of the Additional Protocol. But the procedure therein described has not yet been utilized, nor have any decisions of conciliatory commissions or arbitral boards been handed down. It may be doubted whether any dispute over the interpretation of "intervention" could be settled by any of the proposed means without in the process engendering a good deal of suspicion and distrust of the very sort which the United States has sought to allay.

such action should clearly outweigh the loss of Latin American support.

One further aspect of the consideration of these episodes should be borne in mind, namely the efficiency of the means of unarmed interference as used in particular cases. Whether or not the United States will again use arms-embargoes or nonrecognition, for example, as a means of exercising its hegemony must be left for the future to say. That these have not always been the best means to the ends in view will appear from the cases herein considered. Really, three questions are involved: first, was the objective desirable or proper; second, were the means proper or could they be justified in terms of the end; and third, did the means adopted really work toward the objectives in view? No categorical generalization can be given in answer to these questions. About the first two in particular a great deal of controversy has raged, especially where the means involved the use of armed force. As to the last, while any definitive answer is difficult to give, considerable information in regard to the efficacy of unarmed interference or the previous usefulness of the various methods involved may be drawn from the cases at hand.

CHAPTER XII

CONCLUSIONS

The failure of the United States to restrain itself in Nicaragua, Haiti, and the Dominican Republic has often been attributed to the personalities of the men in control of American foreign policy at the time when armed intervention occurred. The Presidents and their Secretaries of State have been the object of bitter criticism by those who believed that the United States was engaging in unjustified imperialism. The "Dollar Diplomacy" of Knox, the "constitutionalism" of Wilson, the concern of Coolidge for Americans and their interests abroad--these have been accused of large responsibility in "shameful" passages of American history.

While it cannot be denied that the personal outlook of American administrators played a significant part in the conduct of affairs, it must not be forgotten that strategic interests have always seemed to dictate a policy of maintaining the hegemony of the United States in the Western Hemisphere. The anxiety with which the policy was followed, the lengths to which it drove the United States, fluctuated with the tide of events across the Atlantic. It was deflected or re-enforced upon occasion by developments in the United States and in Latin America. But it was always there. Not even the machinations of American capitalists, the quickly answered pleas for help from American investors and residents there, could obscure the fact that over and above any concern for American financial interests there was a deep-felt conviction that defensive needs demanded American dominance in one form or another.

Whatever the quality of judgment on the part of those who administered foreign policy, it is clear that for the motives which prompted them and the objectives which they conceived, whether in terms of strategy, or of the blessings of good government, or of the prosperity of American investors, unarmed interference in Haiti, the Dominican Republic, and Nicaragua was inadequate. Revolution in Haiti could not be stopped by nonrecog-

nition. The Dominicans refused to abide by the results of negotiated agreements or supervised elections. Neither in 1911 nor in 1926 could the government chosen by the United States have been maintained in power in Nicaragua without the use of armed force. Elsewhere it might not have mattered; chronic revolution, deteriorated finances, the fall of a favored government, even the possibility of European action might not have aroused the United States to violence in areas more remote. In Honduras, for example, extreme turbulence was of no such importance as in its neighbor, Nicaragua, since the former was not blessed with a potential canal route. But in these three protectorates the attainment of both short- and long-run objectives seemed to warrant extreme measures; since the objectives were not achieved by other methods, the marines were landed.

These experiences indicated the limitations in effectiveness of intervention short of armed force, limitations which were operative wherever conditions were similar. Nevertheless, it cannot be denied that in certain instances the non-violent weapons of interference had an appreciable impact in the direction desired by the United States. Tinoco in Costa Rica and Huerta in Mexico were eliminated largely because of the attitude and behavior of the United States. A settlement in Honduras was achieved primarily because of American mediation. Orellana was dissuaded from grasping the fruits of revolution in Guatemala by the threat of nonrecognition. Machado's departure was hastened, and Grau's removal was assured, by the participation of the United States in Cuban politics. The embargo on arms shipments to rebels and the sale of arms from United States arsenals to the government of Mexico were of great assistance to Obregon and Portes Gil. It can hardly be said, therefore, that the various means of interference in Latin American politics were totally ineffective, in spite of their shortcomings. Whether the objectives thereof were justifiable is another matter.

To consider separately the various methods of unarmed coercion is in a sense artificial. A single weapon was seldom used alone; nonrecognition usually involved financial pressure, mediation frequently included threats of one sort or another, and the arms embargo was often applied only as a supplement to other measures. Moreover, the manner in which a particular weapon was wielded was somewhat different in different cases, while the com-

plications of the local situation obscured the effects of the specific tools of American policy. Nevertheless, whatever the extent to which they have been used in conjunction with each other, and however obscure their individual results, the refusal to grant recognition, the application of an arms embargo, the use of diplomatic "mediation" and the exercise of financial pressure have been state acts, each one of which may be clearly distinguished.

I

Delays or refusals to extend recognition have not been restricted by the United States to its relations with irregular governments in Latin America. When those nations were wresting their independence from Spain, the United States was somewhat hesitant about granting recognition to those new states (as distinct from new governments). The Japanese aggression in Manchuria was refused recognition by the United States in accordance with the Stimson Doctrine. These and other occasions for the granting or withholding of recognition are, however, to be distinguished from the process of recognizing new governments. Whenever a revolution resulted in an unconstitutional succession of government in Latin America (or elsewhere), the United States might consider whether it wished to recognize the new regime. Some delay was often wise, for it was not always certain that a government set up by force was more than transient. But in numerous instances the United States flatly announced that it would never recognize a government of whose origin or character it disapproved.

The purpose of delay or outright refusal to recognize were several, according as the circumstances seemed to warrant. Upon occasion the United States withheld recognition pending the extraction of assurances that the new government would behave itself according to the proper standards of international morality. It was for this purpose that the government of Obregón was not recognized for over two years.

Upon other occasions the United States refused to recognize a particular government because it was believed that it was not supported by the people or that it was bad for the country in question. It was not a question of whether the government could

retain power and exercise de facto authority, but whether it should do so. Upon such considerations of the welfare of the native peoples Wilson based his refusal to recognize Huerta, and Roosevelt excused his refusal to recognize Grau.

A more far-reaching idea was embodied in the Central American treaties of 1907 and 1923. Irrespective of the popular support for, or character of, a man who seized the presidency by revolution, a government put in power through force was not to be recognized. It was fondly hoped that, faced with the assurance that he would not be recognized even though successful in his attempt at revolt, an ambitious Central American politician would wait for the next election. Thus nonrecognition became not only a means of denying the results of revolution, but of attempting to prevent revolutions themselves. It was being used not only to promote stability but also to insure that existing governments would be constitutional.

Unfortunately, this arrangement gave assurance of neither stability nor constitutionality. How many revolts were prevented thereby it is, of course, impossible to say, but at least it is obvious that a good many did occur in spite of it. More significantly, it was no assurance of constitutionality, except in a very limited sense. Tinoco demonstrated the weakness of the 1907 treaty in this respect when he legitimized the coup d'état by getting himself elected afterward. This contingency was provided against in the 1923 treaty by the provision that individuals participating in revolts could not be recognized even though elected. But this ignored the fact that, even without an immediately preceding revolt, the conduct of elections was not "constitutional" according to the standards of the United States. All too often the party in power managed the election and counted the votes in its own favor. And so long as it preserved reasonable order on election day and was not violently resisted by the losers, the government could by these means perpetuate itself in office without losing the recognition of the United States. Nonrecognition may have effected some decrease in the number of revolutions--and therefore an increase in stability--but it may be doubted whether it promoted genuine constitutionality.

In its short-run objectives of eliminating a particular administration or obtaining observance for international obligations the United States was apparently more successful. The im-

mediate neighbors of the United States for various reasons needed its approval; the disapproval expressed in nonrecognition encouraged counter-revolution, and even though the United States expressed pious objections to such movements, they were, after all, the surest means of ejecting the usurpers. At the same time, nonrecognition carried with it financial strangulation, at least in most of the Caribbean states. This contributed much to the downfall of Tinoco and Huerta--though it failed utterly with Hernandez Martinez in El Salvador, and apparently had little effect on Ayora of Ecuador. This too had its self-contradiction, inasmuch as the honorable process of graft and a willingness to retire which was attendant thereupon might have been hastened by easier access to funds. But whatever its inconsistencies, the United States did manage to oust a number of Latin American presidents through its refusal to recognize them.

It should be noted, however, that the effectiveness of the weapon was in large measure dependent upon the relative position of the United States and the conditions within the country whose government was unrecognized. It did not always work, and even where the desired results were achieved, they were often due largely to other causes. Thus, Obregon in Mexico seemed unshaken by the delayed recognition, and his apparent willingness to give reasonable observance to international obligations seemed to be no result of nonrecognition.

Whatever its effectiveness, however, the withholding of recognition from Latin American governments was clearly an act of judgment which interfered with the "natural" succession of governments in those countries. It was therefore indubitably interventionary in purpose wherever it was used. Whether to promote constitutionality as an abstract ideal or to remove an executive for the benefit of the native peoples, or to aid stability to the end that American interests would not be endangered or European nations would have no pretext for interfering in strategic areas, or to assure the behavior of a government in accord with proper standards of international morality, the refusal to recognize signified a desire to meddle, to dictate the personnel or character of a government.

Moreover, by its policy of granting or withholding recognition according to its approval or disapproval of governments, recognition itself came to be a means of intervention. Just as

nonrecognition could shake a government, recognition gave it strength, particularly in view of the fact that it came to be a clear indication of approval. It was in fact the obvious intention to support a particular regime against all contenders which caused the United States in certain instances to grant recognition--thus it was with the de facto recognition of Carranza in Mexico. So long as it was practicing a policy of discrimination, intervention was likely to be effected even in those instances where the United States had no well-formed intention to interfere.

This form of intervention had its unfortunate aspects. There was attendant economic strangulation in Cuba and Costa Rica; the objectionable executives were eliminated, but the people suffered in the process. More seriously for the United States, the Latin Americans have often resented the assumption of wisdom involved in the judgment as to the constitutionality of a government; nor have they always approved nonrecognition where that action was based on the assertion that the unrecognized government did not represent the will of the people, or was incapable of fulfilling its international obligations. No matter what the pretext, it looked like intervention, which had been anathema to Latin Americans.

The acceptance by the Central Americans of treaties forbidding the recognition of revolutionary governments was deceptive. As noted above, stuffing the ballot boxes was a means of perpetuation in office, just as bullets were often necessary to accomplish a change of administration. Consequently, a party in power would favor the elimination of revolution not because it abjured all recourse thereto for its own part, but because the prevention of violent changes minimized the threat to its own continuance in office, which could be prolonged through control of the elections. It was in part for similar reasons that the United States was at times able to obtain the co-operation of other Latin American governments in delaying recognition of revolutionary regimes in the Western Hemisphere. But the peoples within the country directly affected, or at least certain parties therein, often bitterly objected, and the general tendency has been to condemn the United States for its meddling. In consequence, the eagerness to follow the shining example of the United States has been cooled by dislike for the model.

In view of the weaknesses and positive detriments of the

policy, it has been abandoned since 1933. It is, in fact, inconsistent with the behavior of a "good neighbor," and it has been found politically inexpedient. The new departure has been aided by the consolidation of dictatorship in many of the countries formerly affected, so that events have not been of the sort to provoke the pontifical frown--or at least, in whatever degree constitutionality has been abused, relative stability has prevailed. Moreover, in view of the fact that it is by nature a negative form of control, it seems unlikely that it could wisely be resumed. As a means for assuring a dominant position dictated by strategic considerations it is inadequate; as a form of international sanction it suffers from the difficulties of fair and consistent judgment in its application.

II

Arms embargoes have been used by the United States for at least five distinct purposes. After World War the idea gradually became current that the export of arms contributed to involvement in war; therefore, it seemed to follow that a limitation upon such export would help to keep American skirts clear of European fighting. Such was the motivation behind the embargo on shipments to Spain during the civil strife there. With the development of European war on a larger scale, however, it became apparent that whatever the iniquity of the arms traffic and those engaged therein, and whatever the influence which trade with the Allies had exercised in "dragging" the United States into the first World War, the struggle in Europe had serious implications for America. Consequently, the shipment of arms came to be perceived as a means of helping those whose success was a form of insurance for the United States. Without explicitly rejecting the earlier estimate of the arms trader, therefore, the United States repealed the embargo designed to keep the United States out of war.

Another theory classed the arms embargo as a means of preventing or stopping international war. Such was the purpose of the embargo in the case of the Chaco War. In that instance the policy met with some success; there was a fair degree of co-operation among the nations, and it could be effective because Bolivia and Paraguay were dependent upon imported arms. Its use-

fulness elsewhere, however, was limited by lack of world-wide co-operation and by the ability of warring powers to provide their own munitions; so Italy in its conquest of Ethiopia was not seriously hampered by the embargo applied by the United States.

Yet another purpose for an arms embargo has been the preservation of needed materiel. During the World War the United States applied an export embargo on a wide variety of commodities primarily because it needed those goods itself. Such a program had its incidental effects upon neighboring countries, as in the case of Mexico, but these results were largely beside the point.

At the same time, embargoes have been applied in order to limit the arming of a potential enemy. Again, Mexico was subjected to such measures because it was feared that guns purchased by her might eventually be turned against American soldiers. Similar concern has prompted suggestions that shipments of oil and scrap iron should be withheld from Japan (with the concomitant idea that such action might contribute to the stoppage of war, in so far as it would hinder the Japanese campaign in China). To conserve its own supplies, or to prevent the strengthening of the enemy, the United States has resorted to arms embargoes when its own participation in war seemed imminent.

A special necessity for the arms embargo occurred in the case of Mexico, where, quite aside from other considerations, an embargo seemed desirable as a means of limiting the border fighting which injured American citizens in neighboring American towns. So long as the border ports of entry were the channel for arms entering Mexico, fighting for control of the Mexican towns would take place, and in the process Americans just across the boundary line were being injured by stray bullets. Moreover, the concentration of arms and sympathizers on the American side encouraged trans-border raids. It therefore appeared that if the export of arms were forbidden, the value of the border towns would diminish, with consequent decrease in the fighting therefor with its attendant danger to Americans. Obviously, such an objective was pertinent only along the Mexican border; at no other place could such conditions exist, unless Canada were suddenly to alter its ways of peaceful government. Furthermore, with the return of more stable conditions within Mexico, the need for such an embargo disappeared. After 1929, therefore, this particular embargo was dropped.

In so far as these embargoes were adopted for defensive purposes, they could hardly be called interventionary. To preserve needed materiel, to limit the strength of a potential enemy, to stop border fighting--these were not the purposes of intervention, although they may have had their interventionary effects. Where the objective was the stoppage of war, however, there may be some dispute. Although the resort to war has become illegal, measures such as an embargo, designed to force refusal to have recourse to war, are in the nature of external intervention. It is a justifiable intervention, one which the League of Nations sought to organize; as such it might therefore be considered as something distinct, a form of international sanction to uphold the system of law which approved it. The United States, however, did not clearly follow the general principle behind it in the case of Ethiopia; the arms embargo could be a means of upholding law rather than gratuitous intervention only where it was applied with discrimination against the law-breaker, and this the United States failed to do. Whether such action conceived as a sanction could generally be effective is, however, another question not pertinent here.

A sixth objective of the arms embargo, and the one which is of primary concern here, was the inhibition of domestic revolution. In spite of the fact that such embargo was mandatory under the treaty of 1928, it was nevertheless interventionary. The record of the use thereof by the United States clearly indicated that both purpose and effect were to interfere with the course of domestic politics, whether by obstructing revolutions in general or by aiding in the retention or elimination of a particular government. It may be said, therefore, that the Treaty for the Prevention of Civil Strife and the Treaty on the Rights and Duties of States are contradictory; one demands an action which constitutes intervention while the other forbids intervention.

The effectiveness of this weapon depended in part upon the local conditions, in part upon the objectives in mind. Where the immediate purpose was to aid in the removal of a particular president, its manipulation had its effectiveness; certainly it contributed to the exit of Huerta and apparently it was not without weight in the weakening of Chamorro in Nicaragua. Where the intention was to bolster an existing government, it was likewise

of use; Obregón, Calles, and Portés Gil in Mexico were all assisted thereby, and even Carranza was apparently aided in consolidating his position because shipments to Villa were forbidden. Díaz in Nicaragua was so fully supported by the marines that the effectiveness of the embargo cannot be estimated--it was, in fact, a combination case in which the arms shipped might be used against American marines--but apparently it was largely circumvented by the gun-running from Mexico.

Except for action under the treaty of 1928, such assistance to existing governments has been clearly supererogatory, in spite of the general tendency of international law to favor the administration in power. Moreover, it has revealed grave limitations of usefulness. The experience in Brazil dramatized that weakness: the pattern of most "revolutions" in Latin America made such a measure, adopted after trouble had broken out, virtually useless. The difficulty lay in the fact that revolution in Latin America had been in most instances not revolution in the proper sense of the word. Violent changes of government were simply changes of government, palace revolutions, accomplished with material already at hand.

Where revolutionary disturbances had become so chronic as to constitute anarchy, however, the embargo could be of more effect. The Caribbean countries, at least, obtained most of their arms from the United States; an interruption of the flow could appreciably limit the shooting. Such, apparently, was the intention in Nicaragua and Honduras. Even in these circumstances, however, there were two factors which diminished the effectiveness of the embargo: the possibility of obtaining arms elsewhere and the fickleness of the army. Moreover, the distribution of arms among the populace, accomplished over a period of years, seemed to allow for prolonged disturbances without further importations. Taken by itself, therefore, the embargo could neither prevent sudden palace revolutions, nor could it insure against all disturbances.

Nevertheless, the embargo could be used with some effectiveness to support a given government, and the longer continued, the more effective it could become. It could not insure against defections in the government's armed forces, nor could it prevent smuggling from other sources (not even from the United States, at least prior to the establishment of the licensing system in 1935);

but so long as the government retained the loyalty of its army, an embargo could and did seriously hamper those outside the administration who attempted to overthrow the government through armed force. This was the case in Mexico in the 20's; apparently the government in the Dominican Republic was assisted by the embargo from 1905 to 1911. Even in Cuba in 1924 the suppression of the abortive revolt was aided by the embargo, although in this case it operated primarily as a discouragement to the revolutionists who, whatever their initial strength, foresaw eventual defeat because of the attitude of the United States. When taken together with the sale of arms from United States Government arsenals to the government, particularly in those instances where liberal credit terms were allowed, the withholding of arms from the revolutionists could be a large factor in their defeat.

This was particularly true when the United States administered the embargo in favor of the government over a period of years. Once a regime had established itself and obtained something of a corner on the arms in the country, the maintenance of its dominant position was greatly aided by prohibitions on the export of arms from the United States. In such instances, the arms embargo could be an appreciable contribution to stability. Apparently with this consideration in mind, the embargoes on Honduras, Nicaragua, and Cuba have been maintained to this present date. It should be noted, of course, that now the licensing system enables the United States to observe the movement of arms to all foreign countries; the surreptitious purchase of arms by conspirators against the government is therefore extremely difficult, and it is possible that the system therefore works as an informal embargo even where no proclamations are issued.

Even with a continuing embargo, however, revolts cannot be stopped. Shifts in army loyalty may still occur; the pattern of the coup d'état cannot so easily be obliterated. At the same time, in so far as it is deliberately contributing to the continuance of a specific government, the United States is committing passive intervention; where it has openly proclaimed an embargo and sold arms to a government, the interference has become active. The success of the measure as a support to the government has varied; but in every case herein described, the arms embargo has been a form of intervention.

III

In its efforts to "mediate" the factional disputes in Latin America, the United States has all too frequently made suggestions which the parties involved were not entirely free to accept or reject as they saw fit. Unfortunately, it is impossible to ascertain with any precision the degree of dictation involved or the frequency of its occurrence. Mediation has often been surreptitious; in numerous instances there remains no clear-cut record of its use, or of its manner. Nevertheless, it is obvious that the ministrations of American representatives often went beyond the neutral suggestions of a disinterested friend. In its attempts to promote the settlement of disputes the United States usually had a specific suggestion as to what that settlement should be; and with amazing frequency, that suggestion was accepted.

It could hardly be supposed that this phenomenon was due simply to the reasonableness or wisdom of the proffered advice, although in all fairness it must be noted that American suggestions were sometimes so endowed. In the Caribbean area at least, every word which the United States might utter was backed with the implicit threat of force or supported by specific measures of coercion, armed or unarmed. What the American mediator may have said in a particular instance may not be recorded; what calculations passed through the minds of native politicians may not have been revealed; but in general outlines the behavior of the United States and its effect were unmistakable. When the Secretary of State informed willful Central Americans that the United States would "not countenance" a certain action, it was hardly necessary to recite the specific calamities which might befall the wayward ones. And whatever their misjudgments as to how far they might go before eliciting forceful action, or their willingness to flout the "mediator," or their position in the midst of local politics, the factions involved were well aware of the weight of authority behind the advice from the United States.

The various suggestions advanced by American mediators were, of course, designed to fit the particular circumstances, and so were of infinite variety. In general they consisted of proposals of compromise which the United States thought would be

acceptable, or of pointed suggestions that certain individuals should efface themselves. Such detailed advice and expressions of the attitude of the United States, usually delivered with express or implied threats of coercion, were clearly more than simple mediatory suggestions. Moreover, the American representatives frequently operated without the benefit of an invitation spontaneously extended by the contending parties. Most of the "mediations," therefore, were nothing more nor less than gratuitous interference in domestic affairs.

In so far as this sort of intervention consisted of a specific suggestion, its success had to be judged in the first instance by whether it was adopted, and, in the second, by whether, being accepted, it created the conditions which the United States desired. As to the first judgment, it may be repeated that the suggestions of the United States were frequently accepted. In the circumstances, the factions involved often feared to do otherwise. Coercion could be successfully carried out by means of implied threats, whether of armed force or of non-violent pressures. The end results, however, were usually discouraging. Agreements were often ignored, whereupon another mediation or additional measures of intervention were required to effect the desired settlement. In Haiti and the Dominican Republic inadequacy of this sort led to the introduction of the marines. In the last analysis, the permanence of any mediation depended upon the amenability of local politics to such treatment.

After the United States signed the nonintervention treaty, with subsequent utterances abjuring the use of armed force, it may be doubted whether the use of mediation in a local dispute could have even the temporary effectiveness which it once had. Inasmuch as the disputants were frequently brought to terms only because of the explicit or implied threat of armed force--or the actual presence thereof--a firm belief that the United States would not in any circumstances resort thereto might be expected to weaken the authoritativeness of its advice. It appears that in recent years the United States has not even attempted to settle domestic disputes in this fashion (though it should also be noted that the firm position of dictators in many of these countries has decreased the number of instances in which mediation would have been appropriate); it further appears that in the past most of these negotiations have been interventionary. It may well be,

therefore, that single-handed interference of this sort has been consciously abandoned as has the policy of nonrecognition.

It should be noted, however, that in some instances the United States has attempted mediation in civil war in co-operation with other Latin American governments. This is, in large measure, a different sort of procedure. Whereas the representative of a small country might offer his good offices without intervening, while an American official could not divest his words of the mandatory note given by the preponderance of his country, collective mediation was likely to be either more or less imperative than that of a single state. It did not enjoy any signal success, as in the case of the anarchy in Mexico, but it pointed the way toward a more desirable means of handling the problems of internal chaos. The collective action might be intervention, but it was free of the opprobrium attaching to unilateral action by the United States. Moreover, it was suggestive of the possibilities of co-operative action, which might not only settle the problem at hand, but also contribute to general good will.

In addition to the specific suggestions regarding government personnel or the terms of agreement between the parties, fair elections have been advocated by the United States as a means of ultimate settlement. As indicated above, under normal circumstances the holding of a fair election was an almost unheard of phenomenon. There were a number of well-refined techniques at hand, all of which added up to results in favor of the faction controlling the government at the time of the elections. Finally realizing the lack of realism in its suggestion, the United States was upon occasion drawn to take the next step: supervision of elections. Not all of these were conducted with the aid of the marines, it should be noted; but even in those instances where the American observers were unaccompanied by force, and where invitation to be present had been obtained from the local authorities, it had the air of an affront to national sovereignty. Unfortunately, not even the presence of observers could assure the fairness of the election. It may in fact be doubted whether such a thing could be possible; even were the voters subjected to no pressure and the resultant votes counted fairly, the populace in most of these countries was hardly equipped to exercise the franchise with any wisdom. More significantly for the ultimate success of the measure, however, the losing party often refused to

abide by the result. The candidate who enjoyed the support of the majority might win the election, but that did not mean that the losers were willing to wait until the next election day in order to obtain control. As a result, supervised elections were no sure cure for revolutionary outbursts.

Closely allied to mediation between contending factions, were the diplomatic representations designed to alter the laws or policies of existing governments. It cannot be said that this was necessarily intervention; representations on behalf of nationals injured by discrimination or by failure in general to fulfill international obligations are the prerogative of the state whose nationals are affected. If such protests are directed toward behavior which does not violate the canons of international law, however, and if the objections are repeated in menacing tones, there may well be intervention. Here there is raised the borderline conflict between the rights of a state on the one hand and its duties on the other. Mexico maintained that it had the right to arrange its fundamental law for the benefit of its people, while the United States insisted that in so doing it was failing to observe its duties under international law. The United States may have been correct in its interpretation of the Mexican law and its effects, and of international law; but it should be noted that instead of awaiting the occurrence of actual damage to American citizens and the outcome of proper recourse to Mexican courts, it objected to the passage of the law itself. Similar behavior was noted in the case of Bolivia. Moreover, the intimations as to results amounted to threats, if not of armed interference, at least of other unfortunate consequences which might force acquiescence in American wishes. And, in the smaller countries, where the United States had an ominous record of armed interposition, diplomatic representations could hardly be divested of a threatening tone, whatever assertions to the contrary the United States might make.

While it is difficult to define the dividing line between proper diplomatic representations and dictatorial interference, it may be noted that in its definition of intervention the Conference Committee at Montevideo included "threatening diplomatic representations." This would clearly apply to many of the previous actions of the United States, for its efforts to change domestic legislation and its objections to governmental policies

have often been "threatening," and sometimes of dubious justification under international law. In such instances, the United States was going beyond the proper sphere of interposition to obtain redress for injured nationals. Diplomatic representations were therefore but poorly disguised interventions.

IV

Perhaps the most effective financial pressure has in the past been exercised incidentally through nonrecognition. In so far as the United States was the chief source of government loans, or in so far as European nations followed the lead of the United States in withholding recognition, a government which did not have the approval of the United States found extreme difficulty in obtaining money. In view of their chronic need for credit, this was a serious matter. American banks were naturally reluctant to extend loans to a government frowned upon by the United States. Even American business interests hesitated to carry on normal transactions in the face of the uncertainty created by nonrecognition. A certain amount of caution was generated by the occasional failure of a country to honor the debts contracted by a temporary government, while upon occasion the United States directly discouraged the extension of loans by its citizens; the general warning against loans to Tinoco of Costa Rica was a case in point. The net result was that governments unshaken by other means were often jarred loose by financial difficulties.

In other cases the United States indulged in more direct fiscal intervention through establishment of control of the customs. In the case of the Dominican Republic the idea was obviously promoted by the Government; in certain others it was apparently originated by the bankers, whose loan contracts provided for American collectors and State Department mediation in any disputes which might arise. Naturally the bankers were usually quite willing to accept this form of insurance, but the State Department was the moving force in most of the arrangements, for they allowed for relatively effective supervisory control.

As a further means of intervening in behalf of a favored government, the Department frequently encouraged and assisted in the procurement of a loan in the United States. In view of the chronic financial embarrassment, this was a considerable aid to

the governments thus favored. It was not a question of finding profitable outlet for American investment, although that consideration must have played some part in the transactions, but rather of promoting the stability of particular administrations. Like the other measures to the same end, therefore, it was a means of unarmed intervention. Also like those other measures, its success in maintaining a particular government depended in large measure upon the local political situation.

A major objective of these refinancings, however, was the displacement of European capital. It was early perceived that intervention by European nations could be undertaken with some justification so long as Latin American governments were delinquent in their debts contracted in Europe; not even the Hague Convention prohibiting the use of force in the collection of contract debts could remove all fear. For this reason the United States desired that Latin American debts should be held in the United States, and to that end it encouraged the replacement of European by American capital. Moreover, the private investments of Europeans in business enterprises could also be the cause of action by their governments in those cases where revolutionary disturbances or confiscatory laws and taxes threatened their security. This too might lead to European control in the Western Hemisphere, so the United States was eager to promote the displacing of European capital in commercial investments as well as in government loans. If any intervention was to take place because of debts or for the protection of nationals, the United States wanted to be the one to do it.

These methods of manipulating finances to maintain some stability had their obvious drawbacks. Negotiations with American bankers caused a great deal of criticism; the suspicion was raised that the Department was being led by the moneyed interests, or that the poor innocents in Latin America were being exploited by the bankers. There could be no doubt that Latin American governments had borrowed unwisely, and that their successors were therefore saddled with inordinate debts--though many of these deals had been arranged in the pre-War period with European investment houses. Actually, both the Latin Americans and the investors in the United States were being fleeced, while the bankers took huge profits. The spread between the price paid by the individual purchaser of bonds and that paid by the bankers to the

government was often extremely large. It was, perhaps, no more than warranted by the risk of the investment; but the bankers were not taking the risk--it was generally passed on to the bondholder who was frequently a small investor.

More important than this aspect, however, which had nothing directly to do with the interest of the State Department in intervening, was the ineffectiveness of informal control over the bankers. Persuading them to extend a loan at the psychological moment was not always easy; nor could they always be restrained from extending loans to governments on terms which would increase the likelihood of future trouble. An ad hoc supervision of this sort was certain to have its weaknesses.

As a means of controlling a Latin American government, the customs administration was no doubt the most effective, for it provided for supervision at the source of trouble. Tangled finances productive of much dispute could be straightened out, and both the repayment of creditors and the necessary income for running expenses of the government could be assured. The only trouble was that this insult to sovereignty was often resented, and, when revolutionary disturbances occurred, there was danger that control of the customs would be forcefully disputed. In so far as a steady income could assure the permanence of a government, this was a useful weapon, but it could not prevent revolutions. On the other hand, once in control of the customs, the United States could and did use its position to force reluctant governments to do its bidding. It could not create stability thereby, as witness the case of the Dominican Republic, but it did enable the United States to apply acute pressure on specific matters.

The customs controls have been abandoned and the sale of Latin American bonds has dried up--but in their place has come a new method, much superior to that of working through the bankers. In 1934 there was established the Export-Import Bank of Washington for the purpose of extending trade credits where private financing was inadequate. It was expected that its fields of activity would be: (1) the extension of intermediate credit in connection with the exportation of agricultural products, (2) the granting of long-term credits to further the exportation of durable goods, and (3) assistance to private firms hampered by foreign exchange

control restrictions.¹ Originally the Bank was set up to assist in the anticipated trade with Russia, and a second one was constituted for trade with Cuba, with the expectation that additional banks would be established for each country with whom the special conditions of trade seemed to warrant it. However, the expected trade with Russia did not materialize and it was perceived that the existence of banks for some countries and not for others would create ill feeling, so the first two were merged in one. Thereafter the Bank continued to function on a limited scale, serving almost entirely to assist in the export of durable goods through the granting of long-term credits. Its usefulness as a political weapon, however, was made apparent in the summer of 1938, when a United States engineering company concluded a contract to construct roads in Haiti and to provide all the materials not available there. Haiti made payments through 5 per cent notes, which the Bank agreed to purchase up to a total of \$5,000,000 on the understanding that the material used should be obtained in the United States. The significance of this transaction was indicated by the general belief that it was done in order to forestall a similar loan from Germany.²

After the present war broke out, and the United States became concerned about the economic requirements of hemisphere defense, it became apparent that some contribution to that end might be made by expanding the activity of the Bank. Previously loans had been made to the exporters of American goods, but the Administration desired to alter this procedure so that loans could be extended directly to Latin American governments. It was not supposed that the financial position of these governments in every case warranted such transactions on a purely business basis, but it was clearly recognized that financial loss might be repaid in the strategic values of friendship. Moreover, it was realized that economic welfare and political stability were important if the Latin Americans were to resist the encroachments of Nazi economic warfare. During the summer of 1940 a bill was introduced

¹Charles R. Whittlesey, "Five Years of the Export-Import Bank," American Economic Review, XXIX (September, 1939), 491.

²Ibid., pp. 493-94.

in Congress providing for an increase in the lending potential of the Bank to the extent of \$500,000,000, which was designated specifically for use in the Western Hemisphere. The avowed purposes were three: (1) to assist in the development of resources, (2) to aid the stabilization of national economies, and (3) to assist the orderly marketing of Western Hemisphere products. Provision was made that loans could be extended directly to governments and their central banks, or if guaranteed by the government or central bank, to the political subdivisions, agencies and nationals of these countries.¹

The necessity for adopting this measure was urged in the name of national defense. It was not denied that the program was designed to aid the American business man too; said Federal Loan Administrator, Jesse H. Jones:

The increased lending capacity will place the bank in a position to assist in the good neighbor policy and at the same time aid American manufacturers and exporters who will meet an ever increasing competition from other parts of the world, particularly when the war is over. Other countries assist their exporters in many ways, and if we can assist ours through lending under what appear to be reasonably sound practices, we will aid our own general economy.²

Nevertheless, in this instance the concern for American business was subordinate to that for Latin American good will and resistance to Nazi blandishments. The Acting Secretary of Commerce pointed out that the proposed expansion of the Bank reflected "recognition that our economic relations with the other countries of this hemisphere and economic conditions in such countries are vital factors in our ability to defend ourselves against attack."³ The Acting Secretary of the Treasury added that his Department was "strongly of the opinion" that such an extension was necessary "in view of the existing national emergency."⁴ It was recognized as a departure from the previous purposes and methods of the Bank, and it was not denied that there was considerable likelihood of loss through loan defaults; but it was felt that the losses were likely to be less than the effects to be purchased thereby. From

¹U. S. Congress, House, Committee on Banking and Currency, Increasing the Lending Authority of the Export-Import Bank of Washington, Hearings, 76th Cong., 3d Sess., August 6, 7, 8, 13 and 14, 1940 (Washington: Government Printing Office, 1940), p. 1.

²Ibid., p. 30.

³Ibid., p. 4.

⁴Ibid., p. 5.

a purely economic standpoint the loans were expected to operate for the increase of production of strategic raw materials and of those commodities which the United States customarily purchased abroad. Moreover, it was pointed out that an increase in these needed purchases would not only contribute to the prosperity of hemispheric neighbors but would provide dollar exchange where-with purchases could be made in the United States. In short, it could serve as a stimulus to hemispheric trade. What could be done to organize orderly marketing of surpluses, however, was not clear.

More significant than the conception of the Bank as an aid to economic prosperity and general good will was the belief that it could contribute to political stability. It was pointed out that, "if these South American countries are compelled to sell their products at distress prices, the economic, and probably more so the political, conditions in South America might become so serious as to have a bad effect on us."¹ Mr. Jones himself emphasized that current loss of European markets would cause "hardships which will become increasingly severe, and which may have a tendency to bring about political instability."² Once more the United States had become interested in "stability" of the governments of its neighbors.

This was, indeed, a more subtle means of assuring stability. Here was none of the strong-arm method of landing marines, none of the overt moral pressure of nonrecognition or the threat thereof. It was not, apparently, directed in favor of any specific government, nor was it endowed with the pious trappings of "constitutionality." But its motivation was the same as that which prompted the invasion of Haiti and the Dominican Republic, the same as that which was largely responsible for the supervision of Nicaragua and Panama, the same as that which in earlier times had led the Department to favor the displacement of European with American capital. Strategic considerations in the face

¹Remarks by Senator Francis T. Maloney, in U. S. Congress, Senate, Committee on Banking and Currency, Increasing the Lending Authority of the Export-Import Bank of Washington, Hearings, 76th Cong., 3d Sess., July 30, 1940 (Washington: Government Printing Office, 1940), p. 14.

²U. S. Congress, House, Increasing the Lending Authority of the Export-Import Bank of Washington, op. cit., p. 30.

of a strong European threat to security dictated that no European nation should be allowed to get its foot in a door opened by economic distress. Not only was it desired to purchase the friendship of Latin America; it was also believed that the continuance of stable government--or more specifically, the continuance in power of existing friendly governments--was a valuable means of preventing the encroachments of "fifth-column" movements. So long as Latin American governments remained firm and stable, a united front against the "enemy" might be maintained, but political unrest might well lead to the establishment of a government which would welcome the invader, or, at the least, would offer less resistance thereto.

The intention of the operation of the Bank may therefore be said to be interventionary. To "stabilize"--that is, to maintain a government in power, even though it be out of favor with its subjects--is to interfere with the natural course of domestic politics. Of course this does not necessarily follow if the contribution to prosperity increases or retains local satisfaction with the government; but the first effect is likely to be the improvement of the fiscal positions of these governments, with the resultant increase in their ability to perpetuate themselves regardless of popular sentiment. Without passing judgment on the constitutionality, virtues, or popularity of the existing dictatorships in Latin America, the United States has decided that for its own security they are better retained than violently contested or overthrown, particularly in view of the possibility that the contest might develop into the anarchy wherein some ambitious imperialist nation might find its opportunity. No doubt this estimate of its own best interests is correct; most of the existing Latin American governments have evinced some willingness to go along with the United States, and with the assistance of further loans they may actually become eager to do so. Whatever its practical wisdom, however, the fact remains that the operations of the Bank are intended to prevent changes of government by the traditional methods of revolution or civil war.

Whether that purpose will be achieved, and what part the Bank may contribute to that end, remains to be seen. Certainly it is plausible that direct governmental loans of the sort already extended by the Bank should have some effect toward increasing the domestic power of the governments to whom the loans

are made. Furthermore, it may prevent the increase of economic distress which has always tended to shake the existing governments of Latin America. The results may prove insufficient in the face of counteracting forces, but at least this weapon is more refined than customs controls and ad hoc arrangements with private bankers.

V

One of the most pertinent objections which has been raised against intervention in general, whatever its form, has been that it inhibited the "right of revolution." That has been the obvious purpose of many interventions, and in so far as they have been successful, that has been their effect. Such criticism could be made of intervention undertaken anywhere in order to promote stability in general, or the existence of a particular government, or both; but it has peculiar applicability in Latin America. In spite of repeated and often sincere proclamations of devotion to democracy and its methods, Latin Americans have been unable to establish and maintain the democratic processes. "Presidents" have maintained themselves in office over long periods, exercising many of the prerogatives of a dictator. The privilege of the franchise has been so abused by the ignorance of the voters or the management of the elections by the government in power that peaceful changes of administration after a free expression of the popular will have been regrettably rare. The net result has been the constant recurrence of despotism which in many instances was far from enlightened. These Latin American dictatorships should not be confused with the plain or European variety of totalitarianism; there have been similarities, such as the prevalence of personalismo and the exploitation of the nation by its rulers, but the Latin American brand has lacked the peculiar fanatical ideology of the European dictatorships. Whatever the pretexts for holding it in abeyance--and they have been many and ingenious--the Latin American tyrants did not declare that democracy was permanently dead, nor did they work out involved rationalizations to endow their regimes with religious perpetuity. On the whole, Latin American dictatorships have been purely personal affairs, excused on the basis of temporary necessity for the good of the country. Some benefitted the people, others profited only the ruler and his cohorts, but they did not pretend

to be permanent displacements of democracy in behalf of a superior form of government vindicated by theological mummery.

Nevertheless, the fact remained that having been deprived of the methods of peaceful change, the people were in many instances faced with the necessity of removing an oppressive tyrant by recourse to arms. If they were denied that possibility, if outside forces supported the dictator, it meant that intervention was stabilizing tyranny. The United States admitted this when it refused to recognize such executives as Huerta in Mexico and Grau in Cuba on the grounds that to do so would assist in the establishment of oppressive governments opposed by the majority of the people. Yet on other occasions its activities in behalf of stability could have no other effect than the perpetuation of existing dictatorships. It may be pointed out, incidentally, that that is likely to be the result of the current program for promoting political stability; Vargas of Brazil, for example, has maintained himself in office since 1930 without the benefit of the free elections which have given his contemporary an unprecedented run in the United States.

The government which has presumed to exercise supervisory power through intervention in its neighbors' affairs has therefore been forced into a number of inconsistent actions. While it took steps against some regimes on the ground that they were minority governments, it obstructed revolutions against others whose degree of popular support could not be accurately determined, to say the least. It could be suggested, therefore, that it might be well to let nature take its course, permitting a government to stand or fall by its own domestic strength. While beneficent and popular governments have been overthrown by reactionary minorities, resort to revolution has been, on the whole, the only effective method of removing thoroughly objectionable governments. Instead of exercising its own judgment as to which government was best for the Latin American countries, the United States might better have allowed them to choose their governments themselves, if not by ballots, then by bullets. Bad government would have persisted, but it would have been chosen or rejected by natives--"an ill-favored thing, sir, but mine own."

In view of the revolutionary origin of the United States, and of other governments which seemed a vast improvement over the preceding ones, the validity of a "right of revolution" cannot be

fully denied. Certainly, so long as individual state sovereignty is retained, the right of a people to alter its government whenever and however it sees fit must logically follow, particularly if just government must rest upon consent of the governed. It was upon this basis that the Latin Americans protested the illegality of the political interventions by the United States; in so far as their peculiar political customs did not violate their international obligations, they were obviously correct in their objections to outside interference. And in signing the treaty forbidding intervention the United States not only recognized the illegality of the use of armed force within the jurisdiction of another state, but it also admitted the lack of justification for unilateral interference by whatever means which would in purpose or effect deny to a sovereign people the right to overthrow their government by force.

It is submitted, however, that in one sense at least this treaty may prove to be anachronistic. The limitation of state sovereignty seems to be in process of confirmation. On the one hand there is a movement to decrease it by force--that is, through the expansion of empire. On the other is the effort to obtain its decrease by consent--that is, through more fully organized international co-operation. Neither of these movements is new; the progress of empire has been marked out by ancient as well as current history. The movement for fuller voluntary co-operation was embodied in the League of Nations. But whether consolidation be effected by force or consent, it appears that the growth of world interdependence has made unworkable the complete national independence of the nineteenth century. And the removal of certain rights and manifestations of independence must bring with it--intervention.

What the purposes and methods of this intervention might be would depend, of course, upon the nature of the organization established. There are many suggestive examples, from the Roman Empire to the federal system of the United States. The evolution of the organization, whether created by force or by voluntary federation, must involve tremendous difficulties. And which general method is to be followed must depend upon the outcome of the present war. Yet in the process certain national independencies must be sacrificed and provisions must be made for certain forms of intervention.

It seems almost certain that the forms heretofore employed by the United States must be abandoned. If the present crisis should result in no substantial change in the western state system, the treaty limitation upon intervention would forbid not only the use of armed force but also the methods of interference short of armed force whereby the United States has enforced its will. If, however, the end of the war should be followed by world or regional organization, based on consent, then unilateral intervention would have to be replaced by collective action. The arrogance of the United States in its independent action has, in fact, been one of the principle objections raised against its interventions. Not only would it be necessary to forego the right to unilateral action, moreover; it would also be necessary to find entirely collective means for retaining control of the organization over its members. Nonrecognition has proved entirely too haphazard; the control of arms shipments, and indeed, the manufacture thereof, would need to be subjected to organized supervision and control; mediation of the sort practiced by the United States would have to be superseded by orderly judicial processes; and the influence of financial transactions would need to be subordinated to the system of law.

How far such an organization should or might go in intervening in the affairs of its members is plainly a matter of speculation; it can only be said that it may well be much further than heretofore accepted.¹ Some hint of the degree of interference which has been envisaged by some may be obtained by comparing the notion of insuring the "four freedoms" with existing conditions in some of the "democracies" of the Western Hemisphere. For ex-

¹ A project presented to the Montevideo conference by the Executive Committee of the American Institute of International Law includes:

"The conservation of order within States and the guaranty of the rights of man are essential conditions of international juridical life. In the cases laid down by general or regional treaties of organization, the [international] community shall be able to intervene, by means of organs enjoying international authorization, for the purpose of insuring the existence, in the territory of any member State, of the minimum degree of order necessary in order that the international rights of States and of individuals may be effective" (Raymond L. Buell, "The Montevideo Conference and the Latin American Policy of the United States," Foreign Policy Reports, IX, No. 19 [November 22, 1933], pp. 212).

ample, the frequency with which Latin American despots have liquidated individual newspapers or established complete censorship of the press suggests that freedom of speech could be assured only with the aid of outside pressure. This question of the specific measures which a world or regional organization based on consent should or could adopt can be answered only in the future; but it is clear that well-ordered "intervention" under the administration of the group will be a conspicuous feature of any successful international organization.

On the other hand, it is quite likely that at least for some time to come any real consolidation which takes place may be based upon force. The long-run trend may be reversed by the outcome of the war, or it may even gradually reverse itself thereafter; but in the meantime national sovereignties are being shorn by force. In this circumstance, the intervention practiced by the conquering state has both the obnoxious features of excessiveness and unilateral arbitrariness. It was precisely this sort of thing which the United States abjured in the treaty on the Rights and Duties of States, and it has been this policy which the United States has renounced in the past eight years. However, in a situation where control of other states becomes imperative it is clear that unarmed intervention is likely to prove totally inadequate. Experience with control by means short of armed force have demonstrated that such control is tenuous at best. Under pressure of serious external threat it may well prove so inadequate as to require replacement by armed force.

It is therefore possible that the United States may find it advisable, in spite of its treaty obligations, to intervene with armed force to the end that firm control may be established over countries whose falling into enemy hands would endanger the security of the United States. In such circumstances the question of legality or illegality of intervention would be academic. Yet it should be repeated that the political problem involved should not be ignored; if violation of the treaty by whatever means is attended by resentment whose effects are greater than the benefits of military occupation or other forms of intervention, such action could not be justified even in terms of expediency. This risk in the relations of the United States with its neighbors of the Western Hemisphere may be obviated through acquiring assent to whatever measures may be necessary for the

defense of all. With that assent, military occupation would cease to be intervention.

This points to the important distinction between those actions forbidden by the nonintervention treaty and such actions as might be undertaken by consent or by an international organization. Strictly speaking, the nonintervention treaties forbid the unilateral action of a single state; by omission they might be taken to allow the same action when undertaken by collective action. Only by such interpretation could the treaties be made compatible with the inevitable growth of international collaboration. The United States has no longer the right to act strictly upon its own initiative; the ineffectiveness of such actions has in fact been demonstrated. Hereafter the promotion of stability, the insurance of freedom, will have to be undertaken by collective action. Any of the functions of intervention which may be justified will then be performed by the organic law of international organization.

